

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672


8703 HOUSE RESOURCES



# RECORDS CERTIFICATION



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9/8/98

Date

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HOUSE RESOURCES COMMITTEE  
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ORGANIZATIONAL MEETING, 1/23/95

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ROBERT HINMAN, 2/14/95

CONFIRMATION HEARING: BIG GAME BOARD -  
LARRY HOLMES, 4/24/95

CONFIRMATION HEARING: BIG GAME BOARD -  
WALTER SAMPSON, 4/24/95

CONFIRMATION HEARING: BOARD OF FISH

CONFIRMATION HEARING: BOARD OF FISHERIES -  
TREFON ANGASON, 4/28/95

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VIRGIL UMPHENOUR, 2/13/95

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CONFIRMATION HEARING: COMMISSIONER DEC -  
GENE BURDEN, 2/14/95

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FRANK RUE, 4/21/95

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JOHN SHIVELY, 2/14/95

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ALASKA OIL AND GAS COMMISSION - DAVE NORTON

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CONFIRM

HEARING

ROBERT

HINMAN

2/14/95

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3718

February 14, 1995

The Honorable Gail Phillips  
Speaker of the House  
State Capitol  
Juneau, AK 99801-1182

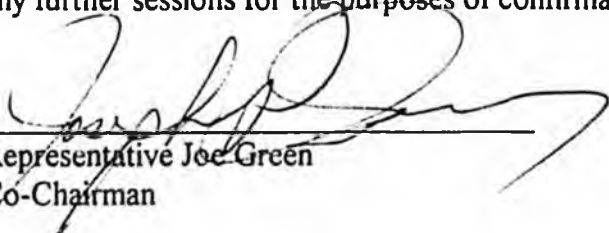
Dear Madam Speaker:

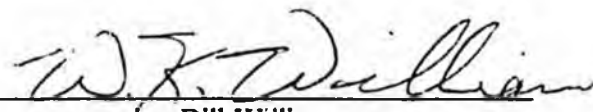
In Accordance with AS 39.05.080, the House Resources Committee has reviewed the qualifications of the following and recommends that appointment be forwarded to a joint session for consideration:


### Big Game Commercial Services Board

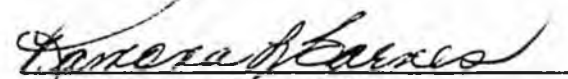
Robert A. Hinman

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

  
\_\_\_\_\_  
Representative Joe Green  
Co-Chairman

  
\_\_\_\_\_  
Representative Bill Williams  
Co-Chairman

  
\_\_\_\_\_  
Representative Scott Ogan

  
\_\_\_\_\_  
Representative Ramona Barnes

\_\_\_\_\_  
Representative Pete Kott

  
\_\_\_\_\_  
Representative Alan Austerman

\_\_\_\_\_  
Representative John Davies

\_\_\_\_\_  
Representative Eileen MacLean

\_\_\_\_\_  
Representative Irene Nicholia

**Robert A. Hinman**

P.O. Box 34195  
Juneau, AK 99803  
Ph: 790-2754

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**OBJECTIVE:**

Re-appointment to the Alaska Big Game  
Commercial Services Board

**EXPERIENCE:**

Self employed, Juneau

08/87 - 02/95 WILDLIFE CONSULTANT, CHARTER BOAT CAPTAIN  
Retired. Wildlife consulting, particularly  
on regulations and big game guiding.  
Operating charter boat in Juneau area during  
summer season. Significant amount of time  
spent on work related to membership on the  
Big Game Commercial Services Board.

State of Alaska, Dept. of Fish and Game, Juneau

08/76 - 08/87 DEPUTY DIRECTOR, GAME DIVISION  
Assisted in administration of Division;  
emphasis on hunting/trapping regulations and  
working with Game Board, as well as personnel  
management. Total of about 8 months as  
Acting Director.

Alaska Dept. of Fish and Game, Fairbanks

01/67 - 08/76 REGIONAL GAME SUPERVISOR  
Supervised Game Division staff and activities  
in Interior and Arctic Alaska. Responsible for  
wildlife research and management activities  
in Region; represented Region and Division  
with Board of Game.

Alaska Dept. of Fish and Game, Homer

07/65 - 01/67 AREA GAME BIOLOGIST  
General wildlife management activities on the  
Kenai Peninsula; game counts, data collection  
and analysis, interface with the public.  
Initiated work on the Kenai Moose Research  
Center facility.

Utah Dept of Fish and Game, Logan, Cedar City, Vernal, Ogden, Utah

07/59 - 07/65 CONSERVATION OFFICER. REGIONAL GAME MGR.  
Wildlife law enforcement, wildlife damage control (as Conservation Officer); supervision of game management activities in northern 5 counties of Utah; game counts, data collection, formulation of regulation recommendations, working with public on wildlife matters.

#### **EDUCATION:**

09/56 - 06/58 Utah State University, Logan, Utah  
MASTER OF SCIENCE, WILDLIFE MANAGEMENT  
Degree: 06/60  
GPA: 3.42

09/52 - 01/54 University of Alaska, Fairbanks, Alaska  
BACHELOR OF SCIENCE, WILDLIFE MANAGEMENT  
Degree: 06/54  
GPA: 2.01

09/51 - 06/52 University of Washington, Seattle, WA  
BIOLOGY. UNDERGRADUATE

09/49 - 06/51 Wenatchee Jr. College, Wenatchee, WA

#### **PERSONAL**

I am 66 years old, in good health, divorced with 4 children, all residing in Alaska. I worked with guides during my tenure with the Department of Fish and Game, and after retirement, was appointed to the Legislative Task Force on Guiding and Game. Following that, I was appointed to the Big Game Services Board in the "Commercial Use Permit Holder's" seat. I am presently the Vice Chairperson of the Board.

#### **REFERENCES**

Mr. Jim D. Rearden  
413 Lee Drive  
Homer, AK  
Ph: 907-235-8543

Mr. Joe Klutsch  
Box 313  
King Salmon, AK  
Ph: 907-246-3030

Mr. Carl Rosier  
8298 Garnet St.  
Juneau, AK  
Ph: 907-789-9117

Post-It™ brand fax transmittal memo 7871		# of pages 2
To FBI LIO	From Dick Bishop	
Co.	Co. AK OUTDOOR COUNCIL	
Dept.	Phone # 907 455 4262	
Fax # 456-3346	Fax # 907 455-4262, 6451 (A)	

*Honorable*  
 Testimony to ~~the~~ Resources Committee  
 on the Confirmation of  
 Robert Hinman  
 for the Big Game Commercial Services Board

...by Dick Bishop, Executive Director  
 Alaska Outdoor Council

The Alaska Outdoor Council supports the confirmation of Robert A. Hinman's appointment to the Alaska Big Game Commercial Services Board.

Mr. Hinman's most important qualification for the position is a genuine concern for the fish and wildlife of Alaska. His second most important qualification is a genuine concern for fair, critical, and well-regulated uses of those resources, particularly big game.

Mr. Hinman has over 30 years experience in wildlife management and use. His experience with the guide industry includes the earlier era—when guides were regulated by the Department of Fish & Game.

This experience coupled with very sound judgment and an open minded attitude makes Mr. Hinman an exceptionally valuable person to have involved in matters of public policy.

I raised the only reservation I have heard regarding Mr. Hinman's service on the Board: Why would anyone of sound judgment subject himself to the frustration of dealing with the present laws relating to guiding and outfitting? My answer: I believe that Mr. Hinman's commitment to sound wildlife management outweighs matters of personal concern or comfort.

PLEASE INCLUDE THIS TESTIMONY IN THE COMMITTEE RECORD,  
 SIGNED,

*Dick Bishop*  
 ALASKA OUTDOOR COUNCIL  
 P.O. Box 73902  
 FAIRBANKS AK 99707  
 PH/FAX 907-455-4262

CONFIRM

HEARING

LARRY

HOLMES

4/24/95



# Alaska State Legislature House of Representatives

Official Business

DATE: April 24, 1995

## COMMITTEE REPORT

Speaker Gail Phillips  
House of Representatives  
Capitol Building

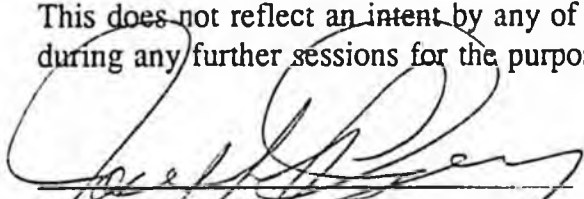
MADAM SPEAKER:

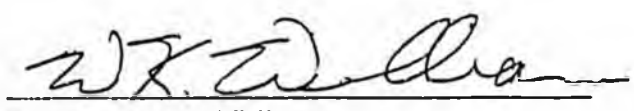
In Accordance with AS 39.05.080, the House Resources Committee has reviewed the qualifications of the following and recommends that the appointment be forwarded to a joint session for consideration:

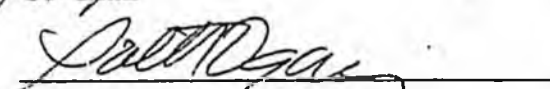
### BOARD OF GAME

Larry Holmes Jr.

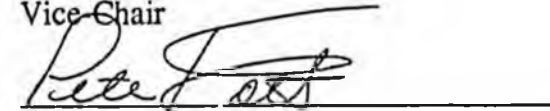
This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

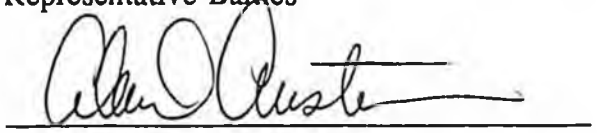
  
\_\_\_\_\_  
Representative Green  
Co-Chair

  
\_\_\_\_\_  
Representative Williams  
Co-Chair

  
\_\_\_\_\_  
Representative Ogan  
Vice-Chair

\_\_\_\_\_  
Representative Barnes

  
\_\_\_\_\_  
Representative Kott

  
\_\_\_\_\_  
Representative Austerman

\_\_\_\_\_  
Representative Davies

\_\_\_\_\_  
Representative MacLean

\_\_\_\_\_  
Representative Nicholia

## RESUME OF

Laurence (Larry) Holmes Jr.  
P.O. Box 454  
Girdwood, Alaska 99587  
Tel/Fax: 783-2180

February 12, 1995

**EDUCATION:**

1982	Master of Science	Biology	Western Kentucky University Bowling Green, Kentucky
1980	Bachelors of Science	Biology Agriculture	Western Kentucky University Bowling Green, Kentucky

**EMPLOYMENT HISTORY:**

1986 to present: Senior Treatment Plant Operator (6 years) and Treatment plant Operator II (3 years) with the Anchorage Water and Wastewater Utility. I operate the water and wastewater treatment systems for the community of Girdwood.

1984 to 1985: Laboratory Analyst (11 months) and Water Quality Technician I (4 months) with the Anchorage Water and Wastewater Utility. I performed chemical and biological analyses of wastewater and drinking water samples.

1982 to 1983: Laboratory Technician/Quality Control Chemist with Kentucky Agricultural Energy Corporation in Franklin, Kentucky. I performed physical, chemical and biological examinations of treated water, wastewater, and primary and secondary final products in a quality control laboratory for a new gasohol plant.

1981 to 1982: Graduate Teaching Assistant/Laboratory Technician with Western Kentucky University in Bowling Green, Kentucky. I assisted college faculty in teaching and research while attending graduate school.

1977 to 1981: Carpenter, Farm Tenant in Richardsville, Kentucky. I was a self-employed carpenter and farm tenant (beef cattle), while attending college.

- 1976 to 1977: Veterinary Assistant with Creekwood Veterinary Clinic in Bowling Green, Kentucky. Performed general duties including assisting in veterinary surgery, while attending college.
- 1973 to 1976: Carpenter and welder with Carter and Rector, Inc. in Bowling Green, Kentucky. I constructed wood residential and commercial structures and steel commercial structures.
- 1970 to 1973 Part-time construction worker with several different residential remodeling and construction companies while attending college part-time.

**MILITARY SERVICE:**

1968 to 1970 Service: U.S. Army Discharge: Honorable  
Rank: Sergeant E-5

**RELATED EXPERIENCE & PUBLIC SERVICE:**

**Appointments:**

- 1994 Knowles/Ulmer Natural Resources Transition Team  
Chairman of the Parks, Forestry, Water and Wildlife Subcommittee
- 1993 Girdwood Trails Committee
- 1992 ADF&G Hunting and Firearm Safety Committee
- 1989 ADF&G Wolf Management Planning Team

**Memberships:**

1986 to present Anchorage Fish & Game Advisory Committee  
Chairman since 1990

**PERSONAL:**

Age : 47  
Marital Status: Married to Kathleen Joy-Holmes  
Children: Nicolette, age 10  
Chelsea, age 8

**REFERENCES:**

Available upon request

CONFIRM  
HEARING

WALTER

SAMP-  
SON  
4/24/95



# Alaska State Legislature House of Representatives

Official Business

DATE: April 24, 1995

## COMMITTEE REPORT

Speaker Gail Phillips  
House of Representatives  
Capitol Building

MADAM SPEAKER:

In Accordance with AS 39.05.080, the House Resources Committee has reviewed the qualifications of the following and recommends that the appointment be forwarded to a joint session for consideration:

### BOARD OF GAME

Walter Sampson

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

Representative Green  
Co-Chair

Representative Williams  
Co-Chair

Representative Ogan  
Vice-Chair

Representative Barnes

Representative Kott

Representative Austerman

Representative Davies

Representative MacLean

Representative Nicholia

# WALTER G. SAMPSON

P.O. Box 1088 • Kotzebue, Alaska 99752 • Telephone: 907-442-3605 (Home) 907-442-3301 (Work)

## PERSONAL

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Born: January 8, 1948  
Marital Status: Married with 4 children

## EDUCATION

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NOORVIK ELEMENTARY, NOORVIK, ALASKA  
CHEMAWA INDIAN HIGH SCHOOL, CHEMAWA, OREGON  
1968

## EXPERIENCE

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~~NANA REGIONAL CORPORATION~~ <sup>Lands</sup>  
*Vice President, 1987 - Present*  
Responsible for enforcement of NANA Land Policies for all Native selected lands.

NANA REGIONAL CORPORATION  
*Director of Lands, 1985 - 1987*  
Administration of NANA Region Lands. Responsible for receiving conveyances and reconveyances under ANCSA. NANA is a corporation formed under the Alaska Native Claims Settlement Act (ANCSA) of 1971.

NANA REGIONAL CORPORATION  
*Land Technician, July 1973 - 1985*  
Responsible for land selection under ANCSA for 10 villages in the NANA region

BUREAU OF LAND MANAGEMENT  
*Emergency Fire Fighter, 1971 - 1972*

## MILITARY

Vietnam Veteran, UNITED STATES ARMY 1968 - 1971

ORIGINAL

144-27-1005 05:53 FROM TADPO (ACT) 10/10/83 P.03

WALTER G. SAMPSON  
RESUME  
PAGE TWO

### BOARDS

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- VOLUNTEER, NANA REGIONAL SEARCH & RESCUE
- VOLUNTEER, KOTZEBUE SOUND SEARCH & RESCUE
- CHAIRMAN, EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL, MANILAQ
- CHAIRMAN, KOBUK VALLEY NATIONAL PARK RESOURCE COMMISSION
- MEMBER, KOTZEBUE FISH & GAME ADVISORY COUNCIL
- CHAIRMAN, BLM, NORTHERN ALASKA ADVISORY COUNCIL
- MEMBER, CIVIL AJR PATROL, KOTZEBUE

### PAST BOARDS

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- CHAIRMAN, NW ARCTIC BOROUGH PLANNING COMMISSION 1986 - 1994
- EMERGENCY STATE ADVISORY BOARD MEMBER 1983 - 1994
- VOLUNTEER FIREMAN, KOTZEBUE FIRE DEPARTMENT 1977 - 1990
- AMBULANCE CREWMAN, EMERGENCY MEDICAL SERVICE 1977 - 1990

ORIGINAL

CONFIRM

HEARING

BOARD

OF

FISH

**UCIDA****UNITED COOK INLET DRIFT ASSOCIATION**

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

April 22, 1996  
Sent via telefax

The Honorable Joseph Green  
House Resources Committee  
Room 24  
State Capitol  
Juneau, AK 99801-1182

Dear Mr. Green,

United Cook Inlet Drift Association (UCIDA) represents the 585 commercial salmon drift permit holders in Cook Inlet. As commercial fishermen we UCIDA Board members are well aware that Alaska's natural and renewable resources are it's lifeblood. The lifestyle every Alaskan enjoys today can be directly attributed to these resources.

The Alaskan Seafood Industry ranks second only to oil and gas in providing state revenues and is Alaska's largest private sector employer. The harvesting and processing of Alaskan seafood provides in excess of 35 thousand jobs. A study of the Economic Impact of the shoreside processing industry upon Alaska during 1993, compiled by Pacific Associates, shows a total impact of 3.8 billion dollars upon Alaskan communities from fishery resources.

The management and harvest of these valuable fisheries resources is governed by the Board of Fisheries, (BOF). People appointed to this board play a critical role in determining the importance of each fishery to the economy of the state, region and local area in which the fishery is located. It is imperative that the members of this board understand the complexity of the fisheries and govern them accordingly to provide a viable, sustainable resource that will benefit all Alaskans.

At present a great imbalance exists in the BOF concerning area and fishery type representation. We have 3 sport fishing people for Cook Inlet, a commercial fish person for Bristol Bay, a commercial fish person and a processor, sport fish person for Western Alaska/Yukon and a commercial fish person for Southeast. There is no one representing the Aleutians/Bering Sea, Alaska Peninsula, Kodiak or Prince William Sound.

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April 19, 1996

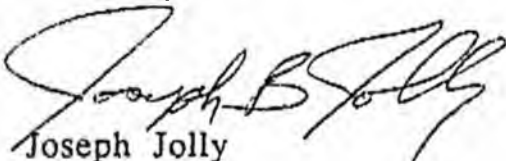
Nor is there anyone very familiar with the shell fishing industry. In addition, five people presently represent in-river fisheries.

The UCIDA Board supports the confirmation of Grant Miller to the BOF because of his background with Aquaculture and diverse knowledge of various fisheries and areas. He has fished troll, seine, longline and gillnet gear. His knowledge of Southeast issues and the Pacific Salmon Treaty would be an asset to the Board.

The UCIDA Board opposes the confirmation of Virgil Umphenour to the BOF because of the representation imbalance in the Board. Mr. Umphenour proclaims to be an avid sport fisherman and guide. With two sportfish seats on the Board and two additional up for confirmation, we cannot support his reappointment. Western Alaska/Yukon already has a representative from Bethel.

The UCIDA Board opposed the confirmation of Dan Coffey to the BOF because of the imbalance of representation of the Board. Also, UCIDA believes a conflict of interest exists because of Mr. Coffey's connection with the F.I.S.H. Initiative and Bob Penney's sportfish caucus. (Please see attachment). Two existing Board members who are in-river sport fishermen already represent Cook Inlet. The appointment of a third member representing the same thing for the same area shows great disregard for the importance of the commercial fisheries to the economy of Alaska. To confirm an appointee who has already made decisions that will have far reaching consequences on the economic well-being of the Kenai Peninsula and Anchorage would be travesty to the voters of Alaska.

Sincerely,



Joseph Jolly  
1st Vice President  
UCIDA

JJ/kmt

Attachment

## Resume - Grant J. Miller

747-5982

## Personal-

- Born** - 12 July '47: Toledo, Ohio
- Schools**
- Graduated Rossford High School: Rossford Ohio 1965
  - Ohio University: Athens Ohio 1966-67
  - Kildalls Navigational School: Seattle, WA 1978
  - Crawford's Nautical School: Seattle, WA 1991
  - Marine firefighting School: Juneau, AK 1991
  - Radar School: Seattle, WA 1992
- Married**
- Wife - Virginia E. Olney: Ginny 1973
  - Sons - Bae Olney-Miller Born 1973
  - Nick Olney-Miller Born 1977
- Employment**
- Self employed commercial fishing
  - Bottom dragging, scalloping, fish trap, lobster inshore and offshore: Cape Cod, Mass. 1966-71
  - Anchovy lampara seine, salmon troll Herring Gillnet: Sausalito, CA 1972-76
  - Salmon troll, Halibut Long Line, Herring Gillnet, Herring bait pound, SE Salmon Seine: Sitka, AK 1977-95
  - Herring Gillnet: Togiak and Norton Sound 1980-83
- Boards**
- Seafood Producers Co-op board 1981-85
  - President 1985
  - Northern Southeast Regional Aquaculture Association 1985-Present
  - President 1988-Present
  - United Fishermen of Alaska (NSRAA rep.) 1990-Present
  - Vice President 1991
  - Sitka committee on Alcohol and other drugs 1993-94
  - Sitka committee on fisheries 1994-Present
  - Seafood Producers Co-op 1994-Present
- Licenses**
- USCG mate uninspected vessels 500 tons 1978-94
  - USCG master any vessel 200 tons, master fishing vessels 500 tons, mate any vessel 1600 tons 1994-Present
  - Marine fire fighting and Radar observer 1994-Present

RESUME

VIRGIL L. UMPHENOUR.  
2400 Davis Road  
Fairbanks, Alaska 99701  
(907) 456-3885  
Fax 456-3889

OBJECTIVE

Appointment to the Alaska Board of Fish

QUALIFYING EXPERIENCE

Have been involved in all aspects of the fishing industry:  
commercial, sport, subsistence

COMMERCIAL

Have fished commercially on the Tanana River in Fairbanks since 1984. In 1985 became a commercial fish processor, processing both fish and roe from my fish and buying from commercial fishermen in Fairbanks, Nenana, Norton Sound and villages along the Yukon River. Have expanded this business so that now my company operates year round doing smoked fish and value added salmon products. Company does approximately 50,000 lbs of value added salmon products a year. Upwards of 250,000 lbs of salmon and roe can be processed during the summer months pending availability of fish.

SPORT

Have been an avid sport fisherman all my life. I have sport fished from the Kenai Peninsula to the Seward Peninsula and am well aware of the importance of the sport fishing industry to both the Alaskan sport fisherman and the tourism industry. My company processes in excess of 40,000 lbs/yr of sport caught fish.

SUBSISTENCE

Have subsistence fished for two seasons while living in Nome. As a commercial fish processor, have dealt extensively with the commercial/subsistence fishermen of the Yukon River Drainage and Norton Sound. For the most part, fishermen in these areas commercial fish to obtain cash to support their subsistence lifestyle. I have seen first hand the devastating effects of the failed fish runs on these people.

## HUMAN RELATIONS

Past and present positions have required a wide range of interpersonal skills, public information management techniques and political awareness. As a commercial fisherman/processor and former military officer, have learned to deal with a wide range of individuals and be cognizant of their special interests and concerns. Am able to work with others to strike a consensus on critical issues. Was co-organizer of the Yukon River Drainage Fishermen's Association (YRDFA). Prior to the formation of this organization, it was a common belief that fishermen on the Yukon would never work together. YRDFA has since become a model of cooperation, by showing that when it comes to protecting the common resource, fishermen will set aside their differences and work together.

## COMMUNICATION

Certified military instructor. Am completely at ease when speaking to large groups of people.

## EMPLOYMENT HISTORY

CEO, Interior Alaska Fish Processors,, Inc.  
Registered Alaskan Hunting guide  
Officer, US Army Reserve, Retired

## MEMBERSHIP

Delegate, US Canada Yukon River Salmon Treaty  
Negotiating Committee since 1988  
Co-Chairman, Yukon River Drainage Fishermen's  
Association since Dec 1990  
Tanana Valley Sportmen's Association, life member

## REFERENCES

Lt. Governor Jack Coghill  
State Senator Georgianna Lincoln  
State Representative Richard Foster  
State Representative Irene Nicholia  
State Representative Allan Vezey  
Charles Meechan, Deputy Commissioner, ADF&G  
Roger Huntington, BOG

RESUME'

This Resume' is being submitted in conjunction with my application for a position on the State Board of Fisheries.

Name and Address:Phone Numbers

Dan Kelly Coffey  
207 East Northern Lights Blvd.  
Suite 200  
Anchorage, Alaska 99503

(907) 274-3385 work  
(907) 243-5464 home

I was born August 6, 1946 in Seattle, Washington. I came to Alaska with my mother 3 days later aboard an Arnold Airlines DC-3. We landed at Merrill Field on August 10, 1946. I remember nothing about the trip. I've been an Alaska resident ever since.

My occupation is as an attorney. I have been admitted to the Alaska Bar since May, 1975 so I have been at this work for over twenty (20) years. I am currently a sole practitioner employing one associate and one paralegal. My law practice is limited to commercial/real estate work with some commercial litigation with an emphasis on the purchase and sale of businesses particularly licensed businesses. Prior to opening my own office I was a partner in the lawfirm of Kay, Saville, Coffey, Hopwood and Schmidt for several years.

I am also the owner of two businesses in Anchorage; Dollar Rent a Car and Q-Zar Laser Tag and Family Entertainment Center. I also own Dollar Rent a Car in San Diego, California. In addition, I own and operate several commercial real estate properties in Anchorage. Finally, I am currently developing a residential subdivision in west Anchorage.

I am divorced and have sole custody of my three sons, Ryan, Kevin and Shane aged 11, 9 and 7. Since finishing law school I have lived continuously in Anchorage, Alaska.

I am a member of the following organizations:

- 1) Alaska Bar Association
- 2) Anchorage Home Builders Association
- 3) ARBA/CHARR

My experiences relative to fishing are as follows:

- 1) 1969-1971 worked as a commercial fisherman in Homer and Prince William Sound.
- 2) Previously represented fish processor in Bristol Bay.
- 3) In the late 1970s and early 1980s assisted numerous clients in applications for shore fisheries/tridlands leases.

- 4) 1985-1990 owned 1/2 interest in 80 foot halibut, bottom fishing and commercial tendering boat.
- 5) Previously represented commercial fishermen involved in the Bering Sea crab fishery.
- 6) Previously represented clients in joint venture operations relative to bottom fishery.
- 7) I have been a sports fisherman, both fresh and salt water for many, many years.
- 8) My father was a founder of the Fisherman's Union in Alaska in the 1930s and 40s. He fished commercially in Bristol Bay in the days of sail boats. The goal of the Union was to allow the small commercial fisherman make a living by eliminating the fish traps controlled by Seattle based commercial processors. He was very proud of the role he played in eventually eliminating the traps.
- 9) I served on the Board of F.I.S.H., Inc which sponsored the initiative to increase the allocation of salmon to sports fishermen.

My experiences on previous governmental or public service Boards and Commissions are as follows:

- 1) Alaska Housing Finance Corporation Board, 1988-92.
- 2) Anchorage Museum Board, 1991-92.
- 3) Barrier Free Recreation Board, 1979-present.
- 4) Chairman of numerous Bar Association Fee Arbitration Panels.
- 5) Vice Chairman Governor's Task Force on Charitable Gaming.

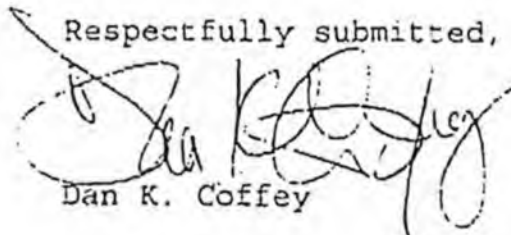
My qualifications for this position are as follows:

- 1) I am a problem solver, facilitator and a mediator. As a lawyer for twenty years, I know that the best way to resolve a difficult situation is to carefully listen to all sides, gather the facts, apply a sound criteria to the decision making process and then implement the decision in a fair and equitable manner so that all interested parties know what you are doing and why you are doing it.
- 2) I believe that reasonable solutions to difficult problems can be reached based a thorough understanding of the facts and on a willingness to engage in a dialogue with those who have differing opinions.
- 3) I have no preconceived notions about what should or should not be done. I have an open mind and a willingness to listen.
- 4) I do not represent any special interests nor do I have anything to gain from serving on the Board.

- 5) I have read the statutes establishing the Board of Fisheries, some of the regulations relative to the Board's operations and many of the cases decided by our Supreme Court relative to the duties, responsibilities and powers of the Board of Fisheries. I believe I know what is expected of the Board under the law.
- 6) Having lived in Alaska all my life, I know people all over the state in all walks of life. I can call on these people for information, for assistance and for ideas.
- 7) Having practiced as an attorney before various Boards and having sat on various Boards, I understand the public process within which the Board of Fisheries must operate.

I hope that this information is helpful to you in reaching a decision. If there is anything further which you require, please advise.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan K. Coffey". The signature is written in dark ink and is positioned above the printed name.

Dan K. Coffey

*Kenai Peninsula Fishermen's Assoc.*  
*34824 K-Beach Rd. Ste. E*  
*Soldotna, Alaska 99669*  
*(907) 262-2492*

*United Cook Inlet Drift Assoc.*  
*P.O. Box 389*  
*Kenai, Alaska 99611*  
*(907) 283-3600*

---

Hand Delivered on February 17, 1996

Larry Engel, Chair  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, Alaska 99802-5526

Re: Report of Potential Violation  
Executive Branch Ethics Act

Dear Chairman Engel:

Under AS 39 . 52 . 230, Kenai Peninsula Fishermen's Association and United Cook Inlet Drift Association wish to report potential violations of the Executive Branch Ethics Act by new Board member Dan Coffey.

Background

Mr. Coffey has been actively involved in the efforts of various Cook Inlet sport fishing interests to secure a greater allocation of Cook Inlet salmon by reducing commercial harvests. Mr. Coffey is the attorney for the Cook Inlet Sport Fishing Caucus, a group registered with Alaska Public Offices Commission and which has lobbied the legislature for passage of a bill to grant sport fishermen a specific allocation of Cook Inlet salmon. The president of this caucus is Bob Penney, the treasurer is Phil Cutler, and the deputy treasurer is Bruce Knowles.

Mr. Coffey is also associated with F.I.S.H., Inc. He was one of the incorporators of that group, along with Mr. Knowles; he served on its initial board of directors, together with Mr. Knowles and Mr. Cutler, and resigned only recently to accept appointment to the Board of Fisheries; and he is the corporation's registered agent. We also understand that Mr. Coffey helped write the initiative which F.I.S.H., Inc., submitted to the Lieutenant Governor for the November election.

Potential Violation No. 1

AS 16 . 05 . 120 (a) provides that "a public officer may not . . . intentionally secure or grant unwarranted benefits or treatment for any person." "Unwarranted

benefits or treatment" is defined, among other things, as "a deviation from normal procedures . . . . If the deviation is based on the improper motivation." 9 AAC 52 . 050 (a). "Improper motivation" means "a motivation not related to the best interests of the state, and includes giving primary consideration to a person's . . . . (B) financial association with a public officer, (C) potential for conferring a future benefit on a public officer; or (D) political affiliation." 9 AAC 52 . 990 (b) (4).

Our concern is that Mr.. Coffey may vote on proposals at this meeting based on his financial association or political affiliation with, or his potential for receiving future benefits from, persons and organizations, thereby granting them unwarranted benefits and treatment. The question we raise is whether Mr. Coffey should be allowed to vote on allocation proposals that are sponsored or supported by the individuals and organizations identified above, or from which they would receive any benefit, given his personal, financial, professional, and political involvement with them.

#### Potential Violation No. 2

AS 39 . 52 . 120 (b) provides that "a public officer may not \*\*\* (4) take or withhold action in order to affect a matter in which the public officer has a personal or financial interest. . ." A "personal interest" is

An interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit.

AS 39 . 52 . 960 (18). A "financial interest" is

an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

AS 39 . 52 . 960 (9) (A).

The potential violation concerns Mr. Coffey taking action on matters in which he has personal and financial interests. The matters in question are proposals to restrict Cook Inlet commercial fisheries in order to increase the allocation of Cook Inlet salmon to sport fishers. Mr. Coffey's personal interests include his involvement with the Cook Inlet Sport Fishing Caucus and with F.I.S.H., Inc., from which those organizations or other persons would receive a

benefit, namely, a greater allocation of Cook Inlet salmon to sport fishers. Mr. Coffey's financial interests include his current and potential future income as an attorney working for these organizations or for individuals associated with those organizations.

### Potential Violation No. 3

AS 39 . 52 . 120 (c) provides that a member of the Board of Fisheries may not act on a matter before the board if he "has not disclosed [on the record and in writing] all personal or financial interests in a business or organization relating to fish or game resources."

Our concern here is that Mr. Coffey may not fully reveal the extent of his financial interests as required by this section. As set forth above, a "financial interest" includes professional relationships that are a source of income. It is incumbent on Mr. Coffey to reveal his professional relationships, and specifically, his service as an attorney, with any and all businesses (including sole proprietorships and individuals carrying on a business, AS 39 . 52 . 960 (5)) and organizations relating to fish and game resources. In making these disclosures, Mr. Coffey must identify the extent of his involvement with such businesses and organizations -- including, at the least, the nature of his work for them and the amount of his income derived from that work -- so that you can assess the significance of his financial interests and determine whether any action he might take would have only conjectural effect on the matters before the Board.

Mr. Engel, we regret that circumstances compel us to file this report of potential violations of the Ethics Act. We support the Board process and have always tried to participate in that process in a fair and responsible manner. Nor do we intend this as a personal attack on Mr. Coffey. He obviously is an individual who has strong opinions on how Cook Inlet salmon should be allocated, and we respect his right to advocate those views. But we do not believe that Mr. Coffey, given his recent advocacy and his personal and financial interests, should be voting on the highly contentious sport-commercial allocation issues before the Board at this meeting. We trust that in your capacity as Board chair, and thus the designated supervisor for purposes of AS 39 . 52 . 220 and . 230, you will take appropriate action concerning the potential violations of the Act described above and declare that Mr. Coffey may not participate, deliberate or vote on proposals which pertain to sport-commercial allocation. These proposals include, but are not limited to the following:

169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 186, 187, 188, 189, 190, 191, 192, 197, 198, 199, 200, 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 251, 252, 253, 254, 255, 256

STATE OF ALASKA )  
 ) SS.  
THIRD JUDICIAL DISTRICT )

I, JOSEPH L MOORE, being first duly sworn, do hereby state: I have been authorized by United Cook Inlet Drift Association and Kenai Peninsula Fishermen's Association to make this verification; I have read the foregoing report of potential violation of the Executive Branch Ethics Act; and I verify that the facts stated therein are true to the best of my knowledge.

Joseph L Moore

SUBSCRIBED AND SWORN TO before me this 16<sup>th</sup> day of February, 1996.



Nancy J. Ziebler  
Notary Public for the State of Alaska.  
My commission expires: 6-1-99.

CONFIRM

HEARING

TREFFON

ANGASON

4/28/85



# Alaska State Legislature House of Representatives

*Official Business*

The Honorable Gail Phillips  
Speaker of the House  
State Capitol  
Juneau, AK. 99801-1182


Dear Madam Speaker:


In accordance with AS 39.05.080, the House Resources Committee has reviewed the qualifications of the following and recommends that appointment be forwarded to a joint session for consideration:

### BOARD OF FISHERIES

Trefon Angasan

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


  
\_\_\_\_\_  
Representative Joe Green  
Co-Chair

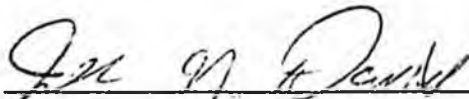
  
\_\_\_\_\_  
Representative Bill Williams  
Co-Chair

  
\_\_\_\_\_  
Representative Scott Ogan

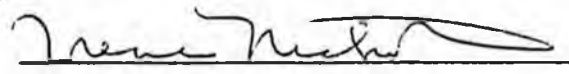
\_\_\_\_\_  
Representative Ramona Barnes

  
\_\_\_\_\_  
Representative Pete Kott

  
\_\_\_\_\_  
Representative Alan Austerman

  
\_\_\_\_\_  
Representative John Davies

\_\_\_\_\_  
Representative Eileen Maclean

  
\_\_\_\_\_  
Representative Irene Nicholia

~~Board of Fisheries~~

Governor Elect-Tony Knowles  
P.O. Box 91989  
Anchorage, AK 99509-1989

November 30, 1994

Dear Tony,

I am interested in serving another term on the State Board of Fisheries. I was appointed to the Board by Governor Hickel on 2/92 and my term expires on 2/95.

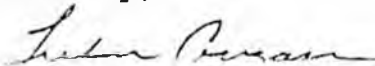
I believe that I can provide the balance that the Board needs in order to address issues that all user groups of the fishery throughout the State of Alaska brings before the Board. I have steadfastly upheld the principle during my term on the board that conservation must have the highest priority. During times when the resource has collapsed and in a rebuilding mode, I believe that subsistence use by the people of Alaska must be afforded the highest priority in the user chain.

The benefits that manifest itself from the principle that conservation must never be compromised has always been rewarding with sustained yield as we have witnessed during my term on the Board.

I also advocate that when there are conservation problems, everyone throughout the user chain must share the burden of conservation.

Although I am a commercial fisherman from Bristol Bay, I am also interested in the well-being of the other users of the resource. The other users are the sport and subsistence users. I believe that we as commercial fishermen must share the resource so that the beneficiaries of the resource can look forward to their fair share.

Sincerely,



Box 100-220  
Anchorage, Alaska, 00510

tele: 265-7829  
fax: 276-3924

Angus W. Johnson

ORIGINAL

November 30, 1994

RESUME

NAME: Trefon Angasan Jr.

DATE OF BIRTH: March 3, 1947

MARITAL STATUS: Divorced

CHILDREN: Three

EDUCATION: Graduated Sheldon Jackson High School  
Attended Sheldon Jackson College

REGIONAL CORPORATION: Bristol Bay Native Corporation

VILLAGE CORPORATION: Alaska Peninsula Corporation

SELF-EMPLOYMENT: Owner/operator, F/V Homeward  
Bristol Bay Salmon fishery

EMPLOYER: Bristol Bay Native Corporation  
Vice President, Corp. Affairs

DATE OF HIRE: January, 1977

PAST EMPLOYMENT HISTORY: Bristol Bay Area Development Corporation  
Regional Director

Alaska Federation Of Natives  
JOM Evaluator  
Assistant Director, Health Affairs  
Representative, American Indian Policy  
Review Commission  
Grant Writer

Bristol Bay Native Association  
Program Planner

Bristol Bay Housing Authority  
Executive Director

Bristol Bay Native Corporation  
Merger Consultant

ORIGINAL

POSITIONS HELD:

South Naknek Village Council  
Secretary

South Naknek Village Council  
President

Qinuyang Ltd (South Naknek Village Corp.)  
Secretary  
President

Alaska Peninsula Corporation  
(merger of five Village Corporations)  
President

Great Pacific Fish Company  
Secretary  
President

American High Seas Fisheries Association  
Vice-President, Alaska  
Board Member

Governor's Subsistence Task Force, (alternate)

Alaska Federation of Natives Board  
Vice Chairman

Bristol Environmental Services  
Chairman (interim)

CURRENT POSITIONS: Alaska Federation of Natives Board,

Education Committee  
Convention Committee  
Chairman  
Legislative Committee

Alaska Peninsula Corporation  
Secretary  
Executive Committee

Bristol Bay Native Association  
Personnel Policy Committee (chair)  
Strategic Planning Committee

Bristol Corporate Services  
Chairman

State Board of Fisheries

ORIGINAL

CONFIRM  
HEARING

VIRGIL

UMPHEN

OUR

2/13/85

HOUSE RESOURCES COMMITTEE  
COMMITTEE REPORT

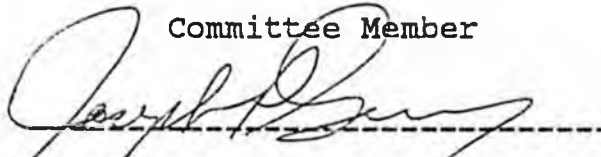
February 13, 1995

REGARDING THE CONFIRMATION OF VIRGIL UMPHENOUR  
AS A MEMBER OF THE ALASKA BOARD OF FISHERIES

The House Resources Committee has considered the confirmation of the appointment of Virgil Umphenour as a member of the Alaska Board of Fisheries. The recommendations of the members of the committee are as follows:

Committee Member

Recommendation



~~Do confirm~~



NR



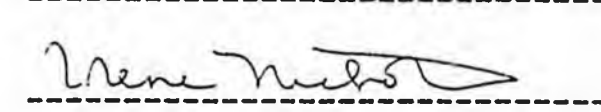
Do confirm



NR



NR



Do confirm

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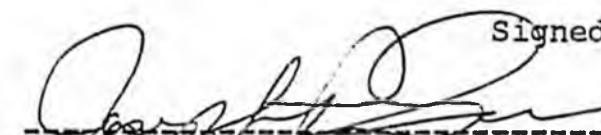
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Signed,

Rep. Joe Green, Co-Chairman



Rep. Bill Williams, Co-Chairman

## RESUME

VIRGIL L. UMPHENDUR  
2400 Davis Road  
Fairbanks, Alaska 99701  
(907) 456-3885  
FAX 456-3889

## OBJECTIVE

Appointment to the Alaska Board of Fish

## QUALIFYING EXPERIENCE

Have been involved in all aspects of the fishing industry: commercial, sport, subsistence

### COMMERCIAL

Have fished commercially on the Tanana River in Fairbanks since 1984. In 1985 became a commercial fish processor, processing both fish and roe from my fish and buying from commercial fishermen in Fairbanks, Nenana, Norton Sound and villages along the Yukon River. Have expanded this business so that now my company operates year round doing smoked fish and value added salmon products. Company does approximately 50,000 lbs of value added salmon products a year. Upwards of 250,000 lbs of salmon and roe can be processed during the summer months pending availability of fish.

### SPORT

Have been an avid sport fisherman all my life. I have sport fished from the Kenai Peninsula to the Seward Peninsula and am well aware of the importance of the sport fishing industry to both the Alaskan sport fisherman and the tourism industry. My company processes in excess of 40,000 lbs/yr of sport caught fish.

### SUBSISTANCE

Have subsisted fished for two seasons while living in Nome. As a commercial fish processor, have dealt extensively with the commercial/subsistence fishermen of the Yukon River Drainage and Norton Sound. For the most part, fishermen in these areas commercial fish to obtain cash to support their subsistence lifestyle. I have seen first hand the devastating effects of the failed fish runs on these people.

## HUMAN RELATIONS

Past and present positions have required a wide range of interpersonal skills, public information management techniques and political awareness. As a commercial fisherman/processor and former military officer, have learned to deal with a wide range of individuals and be cognizant of their special interests and concerns. Am able to work with others to strike a consensus on critical issues. Was co-organizer of the Yukon River Drainage Fishermen's Association (YRDFA). Prior to the formation of this organization, it was a common belief that fishermen on the Yukon would never work together. YRDFA has since become a model of cooperation, by showing that when it comes to protecting the common resource, fishermen will set aside their differences and work together.

## COMMUNICATION

Certified military instructor. Am completely at ease when speaking to large groups of people.

## EMPLOYMENT HISTORY

CEO, Interior Alaska Fish Processors, Inc.  
Registered Alaskan hunting guide  
Officer, US Army Reserve, retired

## MEMBERSHIP

Delegate, US Canada Yukon River Salmon Treaty  
Negotiating Committee since 1988

Co-Chairman, Yukon River Drainage Fishermen's  
Association since Dec 1990

Tanana Valley Sportmen's Association, life member

## REFERENCES

Lt. Governor Jack Coghill  
State Senator Georgianna Lincoln  
State Representative Richard Foster  
State Representative Irene Nicholia  
State Representative Allen Vezey  
Charles Meechan, Deputy Commissioner, ADF&G  
Roger Huntington, BOG

878 Lynwood Way  
North Pole, AK 99705  
January 5, 1994

Honorable Walter J. Hickel  
Governor, State of Alaska  
PO Box 110001  
Juneau, Alaska 99811-0001

Dear Sir

I herein present myself as a candidate to fill the upcoming vacancy on the Board of Fish. I am a commercial fisherman/processor, sport fisherman, and in the past, have been a subsistence fisherman. Hence, I have had actual experience in the three areas where the BOF must try to reach an equitable balance in allocating the fisheries resource. Trying to achieve a balance between these various interests is almost an impossible task.

Currently there are a certain number of sport fisherman on the Board and a certain number of commercial fisherman. These people are from coastal communities. The vast interior region has no representation even though fish is one of their main sources of food. The dollar value of the fish resource on the commercial market exerts a strong influence on the BOF decisions. It is crucial that we get past looking at the fishing industry as how much we can sell the resource for. We must look at the resource with an eye toward conservation and as food and recreation for the people who live here. Unless we insure that enough fish return to the spawning grounds, there will be no fishing for anybody. Our tourist industry will suffer through the collapse of the sport fishery and our cherished Alaskan lifestyle of living off the land will be diminished when we are no longer able to subsistence and sport fish to feed our families. For the Alaskan living in the bush, the traditional lifestyle will be destroyed. I believe that it is time to appoint Board members who care about the state's common fisheries resources and who have a balanced view of the needs of all of the user groups.

I am a commercail fishermen, but my company (Interior Alaska Fish Processors in Fairbanks) yearly processes thousands of pounds of sport caught fish. For the past several years there has been virtually no sport fishing in the Fairbanks area. Visitors have asked us where they can fish. We tell them they must go elsewhere. The Fairbanks Visitor and Convention Bureau has expressed great concern about the impact of the failed fishery both on local businesses and residents who fish for personal use.

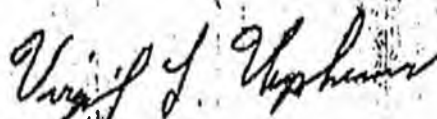
As a fish processor, I buy fish from fishermen on the Yukon and Tanana Rivers and at Norton Sound. For the most part, commercial fishermen in the Interior and Norton Sound are also subsistance fisherman. The money they get from selling their catch is used to buy fuel, etc for their subsistance fishing and hunting. The 1993 failure of the summer and fall chum runs was devastating to the people who rely on these fish to feed their families. The people in Elim, on Norton Spund, have also experienced closures of their subsistance fisheries. This past year, many commercial/subsistance fishermen had there electricity cut off in August. They have had to rely on welfare and government subsidies. The economic impact of the salmon failures on the state is immense...yet there is no subsistance fishery representation on the BOF.

Since 1988 I have been a representative on the US/Canadian Yukon River Salmon Treaty Negotiating Committee. Through this position and as a commercial/sport/subsistance fisherman, I have gained a degree of expertise in both in river and terminal fisheries management. There is currently no one on the BOF with this qualification.

I feel I would be as asset to the BOF. Request your favorable consideration. Resume enclosed.

1 incl  
as

Sincerely

  
Virgil L. Umphenour

878 Lynwood Way  
North Pole, AK 99705  
January 19, 1995

Honorable Tony Knowles  
Governor, State of Alaska  
PO Box 110001  
Juneau, Alaska 99811-0001

Dear Sir

My name is Virgil Umphenour and am currently a member of the Board Fish and I want to remain on the Board until the expiration of the term to which I was appointed. The Interior has not had a representative on the Fish Board for 2 years. Since that time the fish resources in the northwestern and interior regions have been in serious decline.

Governor, have never met, but I would welcome the opportunity to meet with you before you make your final decision. For your information I have enclosed a copy of my resume and the letter of interest which I submitted in January 1994.

2 incl  
as

Sincerely

  
Virgil L. Umphenour

Box 1  
Alakanuk, AK 99584  
January 19, 1995

Honorable, Tony Knowles  
Governor, State of Alaska  
PO Box 110001  
Juneau, Alaska 99811-0001

Dear Sir

My name is John Hanson and am a sitting member of the Board of Fish. My current term will be up at the end of January. I would like to be considered for another term. My long term Fish Board experience and knowledge of the State's fishing issues make me a valuable asset to the board process.

Sincerely

John Hanson

# Alaska State Legislature

REPRESENTATIVE  
**JEANNETTE JAMES**

P.O. Box 56622  
North Pole, Alaska 99705  
(907) 488-1546  
FAX (907) 488-9006



While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1102  
(907) 465-3743  
FAX (907) 465-2381

**House of Representatives**

House District 34

A handwritten signature in cursive script, appearing to read "D. Smith", written over a horizontal line.

January 26, 1995

The Honorable Tony Knowles  
Third Floor Capitol Building  
Juneau, AK 99801

Re: Virgil Umpenhour - Board of Fish

Dear Governor Knowles,

We are very concerned about the prospect of your replacing Virgil Umpenhour as a Board of Fish member before his term ends a little over a year from now.

Mr. Umpenhour is extremely well qualified to act as a member of the Board of Fish and represents the interest of the Interior fisheries, which has had very little representation in the past. These fisheries interests include, but are not limited to, subsistence, personal use, sports and commercial processing.

Historically the Board of Fish has been heavily weighted in favor of the Southern Alaska Commercial Fish industry. We do not quarrel with the notion that commercial fishing interests in this state are important for our state's economy and the interests of our residents; however, we are not willing to have this interest overwhelm the interest of the Interior residents and the recovery of our fish stocks.

Mr. Umpenhour is a long time resident of this state and enjoys a lot of support for his knowledge and ability. His activities on the U.S./Canada/Yukon River negotiation team over the past six years are

indicative of his respect by the industry. He also helped form the Yukon River Drainage Group and contributed to their success in solving problems for the fishery.

As a small commercial fish processor, he gives hope and support for the subsistence fishermen along the Yukon River by buying their fish. He understands the needs of the village participants.

The next meeting of the Board of Fish will be addressing the peninsula fisheries. Mr. Umpenhour has the most extensive information and knowledge regarding the historical and biological information about Area M fishery and needs to be a part of that Board of Fish meeting as it relates to the interest of the Interior fishing concerns. Any attempt to remove him before that meeting will indicate to us that your interest is more political than realistic for the benefit of Alaska as a whole.

Please submit Mr. Umpenhour's name to the legislature for the Board of Fish and allow him to complete his term.

Sincerely,

Representative Jeannette James

JJ/bc

RECEIVED JAN 25 1995

### Keep Umphenour

Jan. 19, 1995

To the editor:

I am disappointed in Gov. Knowles. Bob King, the governor's press secretary, is quoted as saying that, "We're looking at putting our own people on all boards and commissions." The new administration is politicizing positions that were established to administer and allocate the state's resources and assets for the people. They were never intended to be used to pay off political debts or campaign promises to the big guys.

In the case of the Board of Fisheries currently held by Virgil Umphenour, it took the Interior eight long years to get it back. It was not traditionally held by Southeast. The Interior and Northwestern Alaska have had virtually no fish in their streams and rivers for the last four years. With Umphenour, we had a voice on the Board of Fisheries to

---

speak for us against the big intercept fishermen on the coast.

Tony "The Boss" Knowles conned the Interior to get elected then

sold us out!  
RECEIVED  
Eric Alexander JAN 25 1995  
Fairbanks

RECEIVED JAN 27 1995

## Fish politics

Jan. 23, 1995

To the editor:

Tony Knowles is setting up Tammany Hall in Juneau. He is removing people from commissions and jobs that aren't supposed to be used to pay off political debts. We lost Ralph Seekins from the Permanent Fund Board and now we might lose Virgil Umphenour from the Board of Fish.

Gov. Hickel appointed Umpheour to the fish board because the Interior and northwestern Alaska need a voice on the board. There are no more fish coming into our rivers . . . no fish for the sportsman, no fish for the people in the villages to put up for their winter food. The big guys from False Pass and Southeast control the fish board. I guess they put a lot of money in Tony's "grab" pot!

Marvin Londere  
Fairbanks

# Lawyer says Knowles cannot dump Umphenour

## Governor wants to choose another

By KATE RIPLEY  
Staff Writer

JUNEAU.—A legislative attorney says Gov. Tony Knowles cannot kick a local fish processor off the state Board of Fisheries and replace him with his own appointee.

The Knowles administration, however, stands by its plan to replace Virgil Umphenour, owner of Interior Alaska Fish Processors Inc., of Fairbanks, with someone hand-picked by the governor.

Umphenour was appointed to the fish panel last July by former Gov. Walter J. Hickel to fill a vacancy. He has 1 1/2 years

left to serve.

The Legislature has not yet confirmed nor denied the appointment, so Knowles wants to put in his own nominee—most likely someone from Southeast Alaska.

But it's not that easy, according to a 12-page memo by Gerald Luckhaupt, an attorney for the Legislature. In a memo dated Friday, Luckhaupt told Nome Rep. Richard Foster that Knowles may not remove Umphenour on a political whim.

A Board of Fisheries member may be removed from office only for inefficiency, neglect of duty, misconduct in office, or for fish and game violations, Luckhaupt said.

Therefore, Umphenour's appointment is binding on Knowles—absent the Legislature's failure to confirm him.

Foster said he requested the legal opin-

ion because he views the seat as a statewide seat—not one reserved for any particular region. Umphenour has done a good job on the board, Foster said.

"I know him to be fair and impartial on all matters of fishing," he said. Rep. Jeannette James, of North Pole, said the memo is encouraging.

"My read on it is the governor doesn't have the legal option to take Umphenour away," she said.

Umphenour, who was in Dillingham for a fish board meeting, could not be reached Monday for comment.

Knowles should simply allow Umphenour to serve out his term, James said.

That's not acceptable, said Knowles' press secretary Bob King.

"We feel we are on firm legal footing in

putting a different name other than Umphenour's up for confirmation," King said. "We're aware of the different legal opinions."

Indeed, controversy over appointments by outgoing governors is nothing new. In 1982, former Gov. Jay Hammond appointed Michael Whitehead to the Alaska Commercial Fisheries Entry Commission. Then Bill Sheffield took office and appointed his own choice to the panel.

Like Knowles, Sheffield contended he had the authority to withdraw Hammond's nominee because the Legislature had not yet voted on the confirmation. But Whitehead sued to keep his job.

The state eventually settled the lawsuit by paying Whitehead his salary and benefits as a commission member through

June 1983, as well as an additional \$75,000. Luckhaupt said the Umphenour case seems identical.

Past court cases from other states imply the Legislature could ignore Knowles and vote on Umphenour's appointment, even without Knowles' stamp of approval. Or the Legislature could ignore Umphenour and simply vote on Knowles' new nominee.

Whatever happens, it's likely not to be anytime soon.

The Legislature will not vote on confirmations until the end of the 120-day session in May.

King said Knowles may have an announcement about fish board appointments later this week. Two other seats on the panel expire at the end of the month.

**STATE OF ALASKA - OFFICE OF THE GOVERNOR**  
**Boards and Commissions Office**

Applicant Endorsement List

Virgil Umphenour of Fairbanks  
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Abel Saccheus	06/27/94
037		Albert Jackson	01/20/94
037		Alice Fagerstrom	01/20/94
037		Alvin Owletuck	01/10/94
037		Annie Conger	01/25/94
037		Bert Sharp	02/01/94
037		Bill Fliris	01/07/94
037		Bosco Olson	01/12/94
037		Byron Haley	01/28/94
037		Carl Morgan Jr.	01/07/94
037		Carol Oliver	01/20/94
037		Daniel Nelson	01/12/94
037		Dean Paddock	06/01/94
037		Dorothy Barr	01/07/94
037		Edgar Jackson, Sr.	01/20/94
037		Fred Sagoonick	01/07/94
037		Fritz Willie	01/10/94
037		Gene Therriault	02/01/94
037		George Berry	01/14/94
037		George Yaska	01/27/94
096		Georgianna Lincoln	07/28/93
037		Georgianna Lincoln	01/28/94
037		Gilbert Gutierrez	01/21/94
037		Harry Wilde	02/01/94
037		Irene Nicholia	02/01/94
037		Jack Carpenter	01/07/94
037		Jack Coghill	02/20/91
096		Jack Coghill	02/20/91
037		Jack Coghill	01/10/94
037		Jeannette James	01/19/94
037		Joe Sitton	01/12/94
037		Joel Kawahara	02/03/94
037		John Davies	01/27/94
037		Joseph Peter	01/21/94
037		Kenneth Kingeekuk	01/11/94
037		Loretta Bullard	01/07/94
037		Luci Eningowuk	01/07/94
037		Lucy Olick	01/24/94
037		Lyman Hoffman	01/24/94
037		Martina Azean	01/11/94
037		Mike Dalton	01/24/94
037		Mike Miller	01/21/94
037		Myron Naneng	01/07/94
037		Myron Naneng	06/08/94
037		Nina Nanouk	01/27/94

STATE OF ALASKA - OFFICE OF THE GOVERNOR  
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of Fairbanks  
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Nina Patkotak	01/20/94
037		Oliver "Bud" Burris	01/18/94
037		Ralph Seekins	01/17/94
037		Richard Foster	01/11/94
037	retain	Richard Foster	01/10/95
037		Steve Frank	02/01/94
037		Tom Brice	01/12/94
037		Will Mayo	01/05/94
037		William Topsekok	01/12/94

Total Endorsements: 54

1-17-95

Applicants to the Board of Fisheries

Trefon Angasan - Anchorage ✓

Dr. John R. White, Bethel

sp? - George Yasca, Fairbanks

Louis H. Green, Jr.- Nome

Mike Heimbuch - Homer

Oliver N. Holm - Kodiak

Richard Thummel - Kodiak

Bruce F. Stanford - Anchorage

Paul Swetzof - Anchorage

Ralph E. Lohse, Cordova

Gregory T. Williams - Cordova

Robert Piorkowski, Fairbanks

Dr. Patricia A. Crandell, Juneau

Charles Haley, Sitka

Dennis Hicks, Sitka

Jeff Meucci, Petersburg

Mim Robinson, Port Alexander

Ronald K. Sparks, Sitka

1/12

1/18 (Noon)

## board needs Interior member

Interior Alaska may not have the vast fishing industry that coastal areas enjoy, but decisions about fish management still have a significant effect on life here. The Interior needs a voice in those decisions.

Gov. Tony Knowles has told Virgil Umphenour, the only member of the state Board of Fisheries from the Interior, that his name likely will not be on the list submitted to the Legislature for confirmation in the next few weeks.

Maybe Knowles isn't comfortable with Umphenour's style. That's his choice. But he should recognize the importance of having an Interior voice on the board.

Salmon allocations and limits have created great controversy along Interior rivers for the past several years. The board needs someone who carries the background and perspective of people from this area.

Umphenour, the owner of Interior Alaska Fish Processors in Fairbanks, has supplied that. However, he sits in an awkward spot. He was nominated last spring for a three-year term by former Gov. Walter Hickel. He replaced Kay Andrew of Ketchikan, an earlier nominee who the Legislature rejected. But the Legislature never confirmed Umphenour's appointment. He has participated in board meetings, as is accepted practice, but the appointment process was not complete.

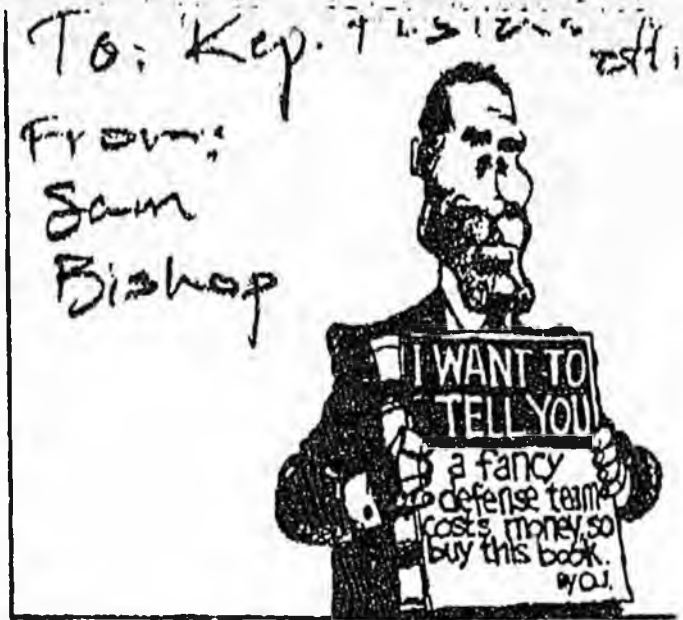
Now Knowles will submit a new list of nominees, for two seats that are scheduled to open, as well as for Umphenour's seat.

Fish issues are not easy to understand or resolve. Interior residents deserve to have someone studying the questions from their perspective.

For example, argument has raged for years over whether chum salmon catches off the Alaska Peninsula have hit Interior salmon stocks too hard. It appeared that the shrinking chum salmon runs in Interior and western Alaska rivers could be blamed in part on "by-catch" at False Pass off the Alaska Peninsula. Boats there pick up large numbers of chum salmon while looking for other salmon species.

The board each year has set a limit on the number of chum caught, but it refused to drop the by-catch limit below 700,000 fish even when chum stocks continued to decline. A majority of board members concluded that there wasn't enough evidence to show that the by-catch was causing a problem. Genetic studies are due next month that should shed more light on the subject.

We need a fish board member to take a close look at these studies and other issues from an Interior viewpoint. People here may not catch as many fish as coastal residents, but what fish we do have are critical for maintaining both subsistence lifestyles and sportfishing opportunities.



## Aeronautic four to feature lead

Let's not miss this one, Friday evening, Jan. 27, at the Westmark Gold Room. This is the 12th banquet for the Interior and Arctic Alaska Aeronautical Foundation, and what a series it has been!

The annual dinner occasion since 1984 has featured:

- Sen. Ted Stevens recalling his World War II experience as a fighter pilot flying the India-Burma-China "Over the Hump Route."

- Gregory "Pappy" Boyington, the famed and flamboyant U.S. Marine fighter pilot credited with 28 "kills," who commanded the somewhat unruly, unpredictable but highly successful "Black Sheep Squadron" during the dark days of ferocious fighting in the South Pacific.

- Adm. James Russell who flew the PBVs in the Aleutians as bombers, fighters, and reconnaissance craft out of Kodiak—every flight an improbable mission.

- The memorable Donald "Deke" Slayton, one of the original nine astronauts of the Apollo space project; and, Masajiro "Mike" Kawato, a Japanese Zero pilot who at age 18 had shot down "Pappy" Boyington. Both survived combat to write books about their daring exploits—one for Japan, one for America.

Here was a great beginning for the IAAAF's annual fund-raiser. Recognition and support followed for the efforts of Randy Acord, a handful of dedicated founding members, and a few others.

Their hard work and persistence made possible the Pioneer Air

The IAAAF Stevens, Al Bush pilot, and Delta air "Alaska Avia tailed and re and machine



area, who flew 237 against Japanese air was shot down twice to write about his "China Through the ger." After World came a test pilot, air racer, and hos radio talk show in Serbia, "Aviation Show mic speaker.

In the early '90s, land, civilian test heed, who holds a and speed records, Fairbanks audience, sonic Age. And G well-known U.S. media talk show actor, and humor



# Alaska State Legislature

Official Business

State Capitol  
Juneau, AK 99801-1182

January 17, 1995

Governor Tony Knowles  
PO Box 110001  
Juneau, Alaska 99811-0001

Dear Governor Knowles:

For quite some time the Interior delegation has worked to place on the Board of Fisheries an individual who is knowledgeable of Alaska's inland fisheries.

The recent Yukon River chum salmon collapse may have been more effectively mitigated had someone with experience and understanding of Interior fisheries been in place on the Board at that time. The 1994 appointment of Virgil Umphenour succeeded in shaping the make-up of the Board of Fisheries in such a manner.

We find it disconcerting that in less than a year Mr. Umphenour faces being removed from the Board of Fisheries and replaced by an individual from another area of Alaska. Before Mr. Umphenour's appointment, the Interior was not represented. The prospect of our region now being returned to that condition is unacceptable in our view.

Alaska's Interior fisheries are an important resource to large Native populations, to small commercial fish processing concerns, as well as to the sportfishing public. The issues are significant enough to warrant representation on the Board of Fisheries. We urge you to consider these constituencies with respect to Mr. Umphenour's tenure on the Board. He can meet and understand these needs. His appointment was and is appropriate.

Sincerely,

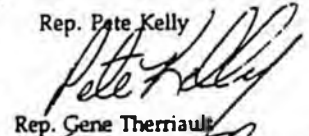
  
Senator Steve Frank

  
Rep. Tom Brice

Rep. Pate Kelly

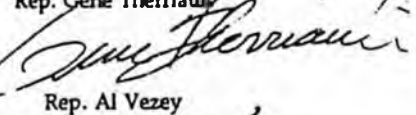
  
Senator Mike Miller

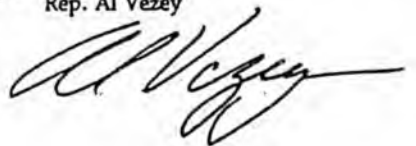
  
Rep. John Davies

  
Rep. Gene Theriault

  
Senator Bert Sharp

  
Rep. Jeanette James

  
Rep. Al Vezey



**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

January 20, 1995

**SUBJECT:** Removal of Board of Fisheries Member (Work Order No. 9-LS0468)

**TO:** Representative Richard Foster  
Attn: Bryce Edgmon

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

QUESTIONS PRESENTED

I. May Governor Knowles remove Virgil Umphenour as a member of the Board of Fisheries, effective January 6, 1995, without cause, and appoint someone else to Mr. Umphenour's position?

**ANSWER:** No. A member of the Board of Fisheries may only be removed from office by the governor for "inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish and game or of a felony. An interim appointee, as is Mr. Umphenour, may only be removed by the governor for the "cause" cited or, if the legislature should fail to confirm Mr. Umphenour, Mr. Umphenour would be removed from his position by operation of law - by the failure of the legislature to confirm. See discussion I.

II. What can the legislature do concerning the appointment of Mr. Umphenour to the Board of Fisheries if the governor does not forward Mr. Umphenour's name to the legislature or forwards someone else's name to the legislature for confirmation?

**ANSWER:** The legislature can confirm or reject Mr. Umphenour's appointment or do nothing concerning Mr. Umphenour's appointment. If the legislature fails to take any action regarding Mr. Umphenour's appointment then by operation of law, AS 39.05.080(3), Mr. Umphenour would be removed from his membership on the Board of Fisheries as of the last day of the legislative session. If the legislature rejects Mr. Umphenour's appointment by affirmatively voting in joint session not to confirm him, then by operation of law (AS 39.05.080(3)), Mr. Umphenour will be removed from his membership on the Board of Fisheries as of that day and the governor will be free to appoint someone else at that time. If the governor attempts to appoint someone else to Mr. Umphenour's position and forwards that new name to the legislature for confirmation and that person is confirmed without Mr.

Representative Richard Foster  
January 20, 1995  
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Umphenour being rejected, a court could rule that Mr. Umphenour is entitled to the office until the last day of the session (as Mr. Umphenour was not confirmed by the legislature) or could decide that the new appointee's confirmation was an implicit rejection of Mr. Umphenour, thereby entitling the new appointee to the office. See Discussion II.

### FACTUAL BACKGROUND

The facts as presented to me by Bryce Edgmon of your office are that Governor Hickel appointed Virgil Umphenour to the Board of Fisheries on July 22, 1994 to the position on the board that became vacant when Kay Andrew's appointment to the position was rejected by the legislature when the legislature failed to confirm Ms. Andrew. See 18th Alaska Legislature, Senate Journal, at 4662; House Journal, at 4324. On January 6, 1995, Mr. Umphenour was informed by a phone call from Jim Ayers, Chief of Staff for Governor Knowles, that Mr. Umphenour was being removed from position on the Board of Fisheries. To date Mr. Umphenour has not received any written notification that he has been removed from his position on the Board of Fisheries.

### DISCUSSION

#### I

In answer to your first question, it is my opinion that Governor Hickel's appointment of Virgil Umphenour to the Board of Fisheries is valid and binding on Governor Knowles and Mr. Umphenour cannot be removed from office by the Governor absent a finding by the Governor that there is cause for Mr. Umphenour's removal from office as provided in AS 16.05.280.

Article III, § 26 of the Alaska Constitution provides:

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

This provision clearly delineates the respective powers of the governor and the legislature regarding the appointment of members of boards and commissions. The governor has the

Representative Richard Foster

January 20, 1995

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exclusive power to appoint and the legislature has the exclusive power to confirm and to provide how a member of a board or commission may be removed from office."

AS 16.05.221(b) provides that the Board of Game is "composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session."<sup>2</sup> AS 16.05.280 provides:

The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member.<sup>3</sup>

The governor may appoint members of boards and commission, such as the Board of Fisheries, to fill vacancies that occur while the legislature is not in session pursuant to art. III, § 27 of the Alaska Constitution.

Further, AS 39.05.080(4) provides that

Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership.

Based upon the facts as presented there was a vacancy on the Board of Fisheries and Governor Hickel, pursuant to statutory and constitutional authority appointed Mr. Umphenour to that vacant position. Mr Umphenour entered upon and was vested with all the duties of his office at that time. But is this interim appointment binding on Governor Knowles or may Governor Knowles withdraw Mr. Umphenour's appointment because he has not been confirmed by the legislature or otherwise remove Mr. Umphenour from office? It

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<sup>1</sup> Article III, § 26 of the Alaska Constitution only applies to boards and commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." The Board of Game is, I believe, clearly a regulatory board subject to art. III, § 26.

<sup>2</sup> AS 16.05.221 was amended by the legislature in section 1, chapter 121, SLA 1992. The quoted language was not affected.

<sup>3</sup> This section, as amended by section 3, chapter 121, SLA 1992, took effect September 20, 1992. The entire section is made applicable to all members of the Board as of September 20, 1992, by section 6, chapter 121, SLA 1992.

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is my opinion that Mr. Umphenour's appointment is binding on Governor Knowles and that Mr. Umphenour may not be removed from office absent the legislature's failure to confirm Mr. Umphenour or Governor Knowles' compliance with the procedure provided in AS 16.05.280 by removing Mr. Umphenour for cause.

Support for this conclusion is found in the plain language of the Constitution and in the court decisions. The Constitution recites in art. III, sec. 26 that the members of those boards or commissions shall be "appointed" by the governor. To determine the meaning of "appointed" we can look to other provisions of the Constitution for assistance. Article II, sec. 5 of the Constitution refers to the terms "nominated," "elected," or "appointed" as exclusive alternatives which are "clearly intended to catalogue the routes by which one may attain an office or position of profit." Beigich v. Jefferson, 441 P.2d 27, 32 (Alaska 1968). In Alaska, "appointed" clearly does not mean "nominated."

That "nominated" and "appointed" are not synonymous terms in this state is further supported by the proceedings of the framers of our constitution. Art. III, § 26 of our constitution, as originally proposed in Committee Proposal No. 10a, by the Executive Branch Committee of the Alaska Constitutional Convention stated:

Whenever a board or commission is at the head of a principal department or of a regulatory or quasi-judicial body, the members thereof shall be **nominated and appointed** by the governor, with the advice and consent of the senate. . . . [Emphasis supplied].

This "nomination" language and reasoning was specifically rejected by the framers of our constitution as it was finally enacted.

The distinction between "nominated" and "appointed" is significant. In the federal system, the president "nominates" persons to the senate for confirmation. A federal "nominee" does not take office pending confirmation. In that situation:

There is no appointment within the meaning of vesting final title to the office until acted upon affirmatively by the legislative branch of government. Justice Marshall states that until the legislature acts, the president is free to choose whom he will.

Munson v. Territory of Alaska, 16 Alaska 580 (1956). But, an "appointee" takes office and is vested with all the duties, powers, and responsibilities of the office subject only to the legislature's authority to fail to confirm the appointment. When a person is "appointed" and takes office and exercises the powers of the office, the governor has performed the "last act" necessary to vest the person with the powers of the office. The governor may not later withdraw or revoke the appointment except that he may remove the appointee as provided by law.

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In Division of Elections v. Johnstone, 669 P.2d 537, 539-540 (Alaska 1983) the supreme court held that the term appointment as used in the Constitution means "to designate for office." The court also found that the appointment of a superior court judge was effective on the completion of the "last act" of the appointing authority, in that case, the letter of appointment issued to the judge by the governor.

The Alaska Supreme Court, in Johnstone, cited McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584 (1930) in support of this proposition. McChesney is strikingly similar to the present case. In McChesney, the Kentucky Supreme Court was confronted with a situation where the governor, having the authority to appoint members of a board subject to confirmation by the Senate, appointed in the interim (between sessions of the legislature), McChesney who entered upon and performed the functions of the office. Several months later, before the legislature had again convened, the governor removed McChesney without cause and appointed another person. McChesney sued to retain his office. The court held that the governor's purported removal of McChesney was illegal. The court stated that the governor by naming and appointing McChesney had exhausted his power to appoint and performed the "last act" necessary to vest McChesney with his office, subject only to the state senate's authority to confirm or fail to confirm and to the governor's authority to remove McChesney for cause as provided by law. The court further contrasted the situation where an officer is "appointed" subject to confirmation by the legislature (as exists in Alaska by art. III, sec. 26 of the Constitution) with the situation where an officer is "nominated" subject to confirmation (as exists for federal appointments) and said:

Furthermore, in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested. But under our system the appointee of the Governor takes the office, enters upon the performance of its duties, and is charged with responsibility. He holds then subject alone to the action of the Senate. His status is not that of a nominee awaiting confirmation, but that of an officer invested with the powers, privileges, and responsibilities of the position until the Senate acts. A recall of his designation would operate as a removal from office. It is argued that appointment to the office consists of two separate acts, one by the Governor and one by the Senate, and until both have acted there is no appointment such as to bring the incumbent within the protection of the law. Even so, the two powers do not act concurrently, but consecutively, and action once taken and completed by the executive is not subject to reconsideration or recall . . . What, then, constitutes an appointment insofar as the chief executive has to do with it? Appointment to an office by one possessing the appointing power is the designation of another person to discharge the duties of the office. [Citation.] It is completed when the appointing authority has performed the acts incumbent upon him to accomplish the purpose. [Citations.] The fact that the title to the office, and the tenure of the officer, are yet subject to the

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action of the Senate, does not render incomplete the act of the chief executive in making the appointment. The appointment alone confers upon the appointee for the time being the right to take and hold the office, and constitutes the last act respecting the matter to be performed by the executive power. [Emphasis supplied].

McChesney, supra, at 587.

The court concluded by stating: "Such power as flows from the act of the Governor in making the appointment is invested by the statute in the appointee, and may not thereafter be recalled or bestowed upon another unless the consent of the Senate is withheld." See also Barrett v. Duff, 114 Kan. 244, 217 P. 918 (1923).

The rule discussed in McChesney v. Sampson has been variously stated by courts and commentators to be the "majority rule," the "general rule," and to be "universally held." See e.g., Barrett v. Duff, supra; State v. Essling, 128 N.W. 2d 307, 311 (Minn. 1964) ("well settled"); State v. Brewster, supra; 89 ALR 135 ("general rule").

McChesney and the rule discussed in it are based upon Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 159-60, 2 L.Ed 60, 68-69 (1803) in which Justice Marshall stated:

[W]hen the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him.

While the principle of a strong executive is embraced by our Constitution and recognized by our courts, Bradner v. Hammond, 553 P.2d 1, 3, n.3 (Alaska 1976), that principle does not mandate a different conclusion than that reached by the United States Supreme Court, the McChesney court and their progeny. To state that a subsequent governor has the authority to recall the appointments of a previous governor, absent constitutional or statutory authority, would render appointments to office personal to the particular governor and his term. This is contrary to our Constitution which establishes an office of governor and provides for succession to that office. Under our Constitution there is a governor and a governor there will always be, though the individuals occupying that office may come and go. See e.g., People v. Shawver, 30 Wyo. 366, 222 P. 11 (1924); Barrett v. Duff, supra; State v. Brewster, 84 S.E.2d 231, 246 (W. Va. 1954); Tappy v. State, 82 So.2d 161, 169 (1955).

When Governor Hickel appointed Mr. Umphenour, that is, named him to the office in the letter of appointment, there was a present vacancy on the Board of Fisheries due to the legislature's failure to confirm Ms. Andrew. Under the rationale of the Alaska Supreme Court in Johnstone, supra, Mr. Umphenour was appointed at that time. If there is a present vacancy

Representative Richard Foster

January 20, 1995

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in office and when the governor performs that "last act," in this case the letter of appointment, then the appointment is effective and binding upon the executive branch, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the governor to remove the appointee "as provided by law." If Governor Hickel had attempted to appoint Mr. Umphenour to a position where a vacancy did not then exist, but for which a vacancy was anticipated in the future (for example, a seat on the board that was currently occupied but the occupant's term was due to expire, say on January 1, 1995), then I would conclude that a purported appointment by Governor Hickel to take effect in the future, after Governor Hickel had left office, would not be binding on the subsequent administration."

This distinction was recognized in an Alaska Attorney General's opinion from Rodger Pegues to Vicki Clayman on December 10, 1979. (Copy attached). In that opinion the attorney general opined that appointments by an outgoing governor to take effect beyond the governor's term are not binding upon and may be withdrawn by the new administration. That opinion, though, recognizes that if "the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense." Presumably, if they make some sense, then they are also effective and binding upon the new administration. If there is a present vacancy in an office when the governor performs that "last act," in this case the letter of appointment of Mr. Umphenour in July of 1994, then the appointment is effective and binding on the new administration, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the new governor to remove the appointee "as provided by law."

Support for this conclusion is found in the settlement of a lawsuit brought by a former member of the Alaska Commercial Fisheries Entry Commission, Michael Whitehead against the state. Mr. Whitehead was appointed to a position on the commission on October 16, 1982, by then Governor Hammond. Governor Sheffield took office in December, 1982, and on February 28, 1983, Governor Sheffield appointed another person to fill the position occupied by Mr. Whitehead. AS 16.43.030(a) provided that the members of the commission could only be removed for cause. Governor Sheffield contended that he had the authority to withdraw Mr. Whitehead's appointment as Mr. Whitehead had not as yet been confirmed by the legislature.<sup>3</sup> Mr. Whitehead then sued to retain his position on the commission. The state settled the lawsuit by paying Mr. Whitehead his salary and benefits as a member of the commission up to June 16, 1983, and an additional \$75,000.

The Whitehead case seems identical to the present case. The settlement by the state seems to support a conclusion that a subsequent administration may not withdraw or revoke the

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<sup>3</sup> A purported "appointment" to take effect at some date in the future is in actuality a "nomination" because the purported "appointee" is not then, at the time of "appointment," vested with all the duties, powers, and responsibilities of the office.

<sup>3</sup> It was apparently the state's position that Mr. Whitehead was a "nominee" and that the "last act" necessary to make his appointment effective was confirmation by the legislature.

Representative Richard Foster

January 20, 1995

Page 8

valid, effective appointments of a previous administration, or replace an appointee except "as provided by law," where the appointee has taken office and is exercising the powers, duties, and responsibilities of the office.

Further support for this position is found in Governor Hickel's purported removal of Peter Sokolov as a member of the Alaska Public Utilities Commission in 1991. Mr. Sokolov had been appointed by Governor Cowper in November, 1990, to begin a new term after the expiration of Mr. Sokolov's previous term. In January 1991, Governor Hickel notified Mr. Sokolov that his appointment was being "withdrawn." The legislature that year took up Mr. Sokolov's appointment, even though the governor failed to send Mr. Sokolov's name to the legislature for confirmation. The legislature then failed to confirm Mr. Sokolov's appointment.

Just last session the Alaska Legislature revisited this issue when Governor Hickel appointed Jack Didrickson to the Board of Game after the governor's previous appointment to the position was rejected by the legislature. Mr. Didrickson took office and performed the duties of that office until he was notified by the governor's office that his "nomination" was being withdrawn, he was being removed from office, and the governor was forwarding the name of a different person to the legislature for confirmation to the seat that had been held by Mr. Didrickson. Absent any communication from the governor the legislature took up the confirmation of Mr. Didrickson and rejected his appointment to the Board of Game.

✱ Be advised that the Alaska Attorney General in an opinion from James L. Baldwin to Kevin Bruce, dated February 3, 1983 (copy attached) advised the Sheffield administration that the governor had the authority to withdraw an appointment made by a previous governor. The opinion does not cite any authority for this position other than another Department of Law opinion from Rodger Pegues to Vicki Clayman issued on December 10, 1979, discussed earlier. That opinion also does not cite any authority other than Marbury v. Madison, discussed herein.

## II

You have asked what the legislature can do with reference the Umphenour matter. I see the legislature as having two options: (A) hold confirmation proceedings for Mr. Umphenour and treat Governor Knowles' purported removal of Mr. Umphenour as ineffective; and (B) do nothing. I will discuss these options each in turn.

### A

If the legislature decides that Governor Knowles's purported removal of Mr. Umphenour is ineffective then I believe the legislature can consider Mr. Umphenour for confirmation in the absence of a communication from the governor requesting the confirmation.

Art. III, sec. 26 provides:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.<sup>6</sup>

This provision provides that the governor has the authority to appoint the members of each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency." These appointees are subject to the legislature's constitutional authority to confirm or reject them."

In Bradner v. Hammond, 553 P.2d 1, 7 (1976), the Alaska Supreme Court described the authority of the legislature to confirm the appointees described in sections 25 and 26 as:

not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.

Therefore, the power of confirmation of the governor's appointees to the "head of each principal department" and to membership on each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency," though normally an executive branch function, has been exclusively delegated to the legislature by the Alaska Constitution.

To implement this confirmation power granted by the constitution the legislature has enacted AS 39.05.080. This section provides that the governor:

shall, within 30 days of the convening of the legislature in regular session, present to the legislature the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or

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<sup>6</sup> Art. III, § 25 provides that the governor may appoint the "head of each principal department" of the state.

<sup>7</sup> Other appointments subject to legislative confirmation include certain military officers, art. III, § 19; the non-attorney members of the judicial council, art. IV, § 8; members of the Commission on Judicial Qualifications, art. IV, § 10, and members of the University of Alaska Board of Regents, art. VII, § 3.

membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution. . . .

But what if the governor fails or refuses to transmit the names of his appointments, or a particular appointment, to the legislature? Is the legislature without authority to confirm or reject the appointment if the governor does not commence the confirmation process by transmitting the name? The Alaska Supreme Court has never considered this issue but the courts of several other states have. The leading case on the subject of the legislature's authority to confirm or reject a gubernatorial appointment in the absence of a communication by the governor appears to be People v. Shawver, 30 Wyo. 366, 222 P.2d 11 (1924). Shawver was cited by the Alaska Supreme Court in Bradner for the proposition that confirmation is actually a portion of the executive's appointment power that has been delegated to the legislature by the constitution. Bradner, supra, at 7, n. 19. In Shawver, the Wyoming Supreme Court after reaching this conclusion addressed the next part of the issue presented by that case: Whether the Wyoming Senate (granted the power to confirm the appointees of the governor by the Wyoming Constitution) could act to confirm or reject an appointee when the governor did not transmit the appointee's name to the Senate and did not ask that the appointee be confirmed? The case involved the appointment of an individual to a state office by a governor who was then succeeded by another governor. The new governor failed to submit the appointment to the Senate for confirmation. The court said:

But why may not the Senate act upon an appointment of which it has knowledge, if the Governor should refuse or neglect to ask for such action especially where the appointee is known to have entered upon the duties of the office? A provision for an appointment by the Governor with the consent of or to be confirmed by the Senate directs not only what shall be done, but also in effect what shall not be done. The affirmative act of the two governmental agencies is required to confer title to an office under such a provision. A completed appointment cannot be made in any other way than as so provided. [Citations omitted] While the Governor's act in selecting the person to be considered for an office may be the principal and perhaps the more important one of the two, it is not alone sufficient. A construction of such provision denying the right of the Senate to act in any case unless directly requested to do so by the Governor or by a communication from his office would obviously provide him the power to ignore the coordinate right of the Senate, and might mean the abolition of that right, and certainly would make it entirely dependent upon the Governor's pleasure.

Shawver, supra, at 23 - 24. The court then held that the Wyoming Senate properly confirmed an appointee, though the governor had not requested the confirmation.

The Kansas Supreme Court reached a similar conclusion in Barrett v. Duff, 114 Kan. 220, 217 P. 918 (1923). That case involved the appointments to state offices by a governor during a recess of the legislature. The appointees entered upon the duties of their offices. A new governor took office and attempted to appoint others to the offices and removed the previous governor's appointees. By constitution, the Kansas Senate had the authority to confirm the appointees of the governor and the governor could not remove the state officers involved here except as provided by law, for cause. The court said:

The plaintiffs deny any force or validity to the action of the Senate in considering and confirming the appointments of defendants because of the failure of the executive to directly transmit the names of defendants. No good reason is advanced why the Senate would not consider such recess appointments without such direct word from the executive. Judicial notice or knowledge is the cognizance of certain facts which judges and jurors may properly take and act upon without proof because they already know them. Judicial notice means that the court will bring to its aid and consider, without proof of the facts, its own knowledge of those matters of public concern which are known to all well-informed persons. Legislative notice is far broader than judicial notice. 23 C.J. 58. The legislative department is equipped to deal with any condition, general or special, however manifested or brought to the knowledge of the law-making power. The mass of individual legislation found among the statutes of all the states demonstrates this legislative attribute. [Citation omitted].

The offices in controversy are all located in the capitol building, in which the Senate holds its deliberations. They are important departments of the state government. The Senate may, and often does, have official business with them. It receives reports from them. It considers the service which the departments are, by law, required to perform. It considers the extent of such service and its requirements. It considers and passes appropriations in order that they may lawfully and properly function. Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether their respective offices are filled; whether they are functioning under the law, or whether there is a vacancy therein. . . . The Senate, which has official knowledge of all of the acts of another state department, may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the

Governor could fill and refill them at his pleasure by simply failing to advise the Senate. . . . We conclude that the Senate did not go beyond its powers in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary courtesy of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberative and final judgment in confirming or rejecting appointees of the Governor.

Barrett, supra, 925-926. The Kentucky Supreme Court in McChesney, supra, discussed in Discussion I also reaches the same conclusion.

In fact, virtually all other courts that have considered this issue have reached the same conclusion. See, e.g., Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575 (1930); State v. Halladay, 219 N.W. 125 (S.D. 1928); State v. Brewster, 84 S.E.2d 231, 248 (W. Va. 1954); Commonwealth v. Stewart, 286 Pa. 511, 134 A. 392 (1926). Our research has disclosed only two court decisions that have reached an opposite conclusion, Attorney General v. Warner, 299 Mich. 172, 300 N.W. 63 (1941) and Burke v. Schmidt, 191 N.W. 2d 281 (S.D. 1971)). In Warner, the court though, held that under the Michigan Constitution and that State's court decisions that the confirmation power of the legislature is a legislative power, not a delegation of the executive's appointment power. As such, its reasoning is contrary to the Alaska Supreme Court's decision in Bradner and is distinguishable on that ground. In Burke, it appears the court held that the board members involved were not entitled to succeed to their offices and perform the duties thereof until they were confirmed. Burke, Supra, at 285. This is contrary to the procedure that is provided here in Alaska by constitutional provision and statute and is clearly distinguishable on that ground. See Art. I, § 27 of the Alaska Constitution and AS 39.05.080(4).

Therefore, I conclude that the legislature may properly consider the confirmation or rejection of Mr. Umphenour as an art. III, § 26 appointee of the governor. While it is hoped that the governor will comply with the reasonable procedure for communication of appointments the legislature has provided in AS 39.05.080, if the governor fails or refuses to request the confirmation of an appointee (as apparently is the case with Mr. Umphenour), the legislature may take notice of previous appointments and of the persons occupying the constitutional offices listed in section 26. To hold otherwise would allow the governor to prevent the legislature from exercising its constitutional confirmation power at his whim, caprice, or neglect and would render the confirmation function a nullity. Shawver, supra. Such an absurd result was not intended by the framers of our constitution and would not, I believe, be embraced by our courts.

Cross references. — For appointment of members of Board of Education, see AS 14.07.085; for a description of districts of the state public school system, see AS 14.12.010.

Sec. 39.05.070. Purpose. It is the purpose of AS 39.05.070 — 39.05.200 to provide procedural uniformity in the exercise of appointive powers conferred by the legislature to eliminate, insofar as possible, recess or interim appointments except in the event of death, resignation, inability to act or other removal from office and the exercise, insofar as possible, of appointive powers only when the legislature is in session. (§ 1 ch 64 SLA 1955)

NOTES TO DECISIONS

Section repugnant to tacit confirmation. — The expressed intention of this section is repugnant to tacit confirmation of appointments. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Sec. 39.05.080. Procedure for all appointments. Appointments shall be made in the following manner:

(1) The appointing authority shall, within 30 days of the convening of the legislature in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

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(3) When the legislature declines to confirm an appointment, the legislature shall notify the appointing authority of its action and a vacancy in the position or membership exists which the appointing authority shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the appointing authority of the legislature's notification of its refusal to confirm the prior appointment. If the name of a person is submitted and is not confirmed, the appointing authority may not, upon resubmission of appointments, submit again the name of the person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership. (§ 4 ch 64 SLA 1955; am §§ 1 — 3 ch 1 SLA 1964; am § 1 ch 2 SLA 1967; am § 1 ch 65 SLA 1974; am § 2 ch 82 SLA 1975)

NOTES TO DECISIONS

Legislative history of ch. 82, SLA 1975. — See Bradner v. Hammond, Sup. Ct. Op. No. 1297 (File No. 2802), 553 P.2d 1 (1976).

Laws requiring bilateral appointments are mandatory. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Paragraph (2) of this section imposes a direct mandate upon the legislature to act upon the nominations of the governor. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

The reason for dual consideration of prospective officeholders is the benefit of the considered opinion of the legislators, to avoid the possibility of incompetency and injury to the public which may otherwise be perpetrated. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Affirmative rejection not required. — Paragraph (2) of this section does not demand affirmative rejection. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Failure of legislature to act on an

appointment is, in effect, rejection. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

And not tacit confirmation. — In acting upon an appointment, the legislature is not exercising a prerogative granted it in its own interest or that of its members; there can be no waiver of that duty so that inaction would be the equivalent of a tacit approval of an appointment. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Tacit confirmation negated by paragraph (3). — The language of paragraph (3) of this section tends to negate any argument of tacit confirmation. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

The question of confirmation is determined at the first vote under paragraph (2) of this section. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

The purpose of paragraph (4) of this section is to vest authority in necessary interim appointees. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

# MEMORANDUM

# State of Alaska

TO: Kevin Bruce, Special Assistant  
Office of the Governor

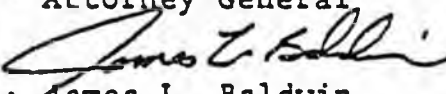
DATE: February 3, 1983

FILE NO: 366-391-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Withdrawal of  
appointment

  
By: James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

You have asked if Governor Sheffield may refuse to forward to the legislature the name of a person appointed by the former governor to an office in the executive branch of state government.

We have attached a copy of our earlier memorandum of advice of December 10, 1979. In that memorandum we advised the governor that he may remove a person before confirmation by withdrawing the nomination, or if the name has not been forwarded to the legislature, by informing the person that he or she is no longer under consideration. We reaffirm that advice. However, you should consider the fact that no authority is cited for our earlier advice and that no Alaska case exists to guide us concerning the resolution of this issue.

If our reasoning expressed in the earlier memorandum is rejected by a court, and the appointment is not considered to be a nomination, then an appointee whose name is summarily withdrawn may have a cause of action for denial of a property right without due process of law. See Breedon v. City of Nome, 628 P.2d 924 (Alaska 1981).

JLB/pjz

Enc.

Vicki A. Clayman  
Office of the Governor

DATE: December 10, 1979

FILE NO: J-66-334-80

TELEPHONE NO:

AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Reappointments to  
boards or commissions

By:

Rodger W. Peppers  
Assistant Attorney General

You have asked whether, prior to the expiration of his own term, the Governor can make reappointments of members of boards or commissions whose terms expire thereafter. You also ask whether, if that is the case, the new Governor can revoke the reappointment and appoint someone else.

We believe that the answer to both questions is yes.

When a term for an office is set by law, the term continues until its conclusion, regardless of the actual tenure of any person who may hold the office from time to time. Thus, when an incumbent leaves office prior to the expiration of his term, his successor is appointed for the remainder of that term, and the successor must be reappointed if he is to hold the position beyond the end of that term. Accordingly, no matter what an incumbent may do, his term continues until its prescribed end.

Nothing, however, precludes the Governor, as appointing authority, from anticipating the end of terms of office and making present appointments to fill the offices as those terms expire in the near future. Indeed, he is required to do this during each session of the legislature with respect to offices which have terms which will expire before July 2, and to submit the names of his appointees to the legislature for confirmation. AS 39.05.080(1). Hence, the Governor, even though he may be leaving office in early December, may make appointments for terms which begin the following January.

If the appointments are subject to confirmation, they are not complete until the legislature confirms them. Prior to confirmation, the new Governor may withdraw the nomination. And indeed, he need not even submit it and can merely revoke the nomination outright. If the appointments are not subject to nomination, they take effect when the appointee qualifies and takes office. That cannot happen until the new term for the office begins. Until that time,

s. Vicki A. Clayman  
December 10, 1979  
page #2

the appointment can, as a general rule, be revoked.

It is probably because each new Governor has the power to countermand any appointive actions taken by each outgoing Governor which remain pending that the latter have not established a history of making midnight appointments to terms of office which begin after they leave office. Where, as in the famous case of Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense. But where they remain pending, they will have been futile unless the incoming chief executive approves of them as well.

WP/pjg



# Alaska Sportfishing Association

We've Moved ! Anchorage, Alaska 99503  
Alaska Sportfishing Association  
P.O. Box 241847  
Anchorage, AK  
99524-1847

TO: Members of the Senate and House Resources Committees

Re: Confirmation Hearings for Virgil Umphenour

Ladies and Gentlemen:

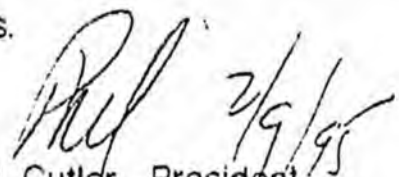
Thank you for holding the hearings for Virgil in such a timely manner. It is important for all of us fishery users to feel comfortable with who is on the Board of Fisheries and in what esteem they are held by their "bosses", you-the Legislature. These hearings will hopefully provide some insight into your feelings on the qualifications and abilities of Mr. Umphenour.

To us, the 'bottom line' is "What does Mr. Umphenour bring to the Board of Fisheries?" First, and most importantly, we feel he provides the Board with knowledge of several of the very important Interior in-river fisheries. Some of these fisheries are unique in that they are fished by all four user groups in Alaska-Subsistence, Commercial, Sport, and Personal Use. Additionally, the Yukon is co-managed with Canada. His knowledge of the international fisheries may be beneficial in managing our other treaty fisheries in Southeast.

As sport fishers, we have appreciated his in-river fishing perspective that he has imparted to the Board of Fisheries over the past year.

We know that you will give him a fair and open hearing and are anxiously awaiting the results of these hearings.

Thank You

  
Phil Cutler, President