

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SHES 124



**CITY OF FAIRBANKS**

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

March 03, 2001

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

Dear Mr. Thomas:

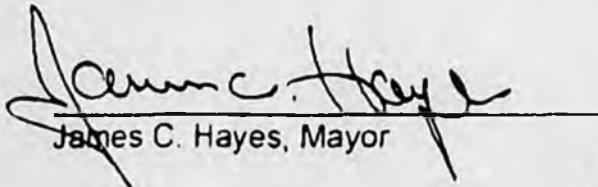
On behalf of the city of Fairbanks, and as the mayor of the city, I wholeheartedly extend my support and endorsement of the LOVE Social Services Center. The LOVE Social Services Center's programs and services will be an invaluable addition to our cities growing social needs.

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

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

Sincerely,

CITY OF FAIRBANKS

  
James C. Hayes, Mayor

**COPY**

**FAIRBANKS**

# Daily News - Miner

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

By Chris Eshleman  
Published January 25, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Staff writer Chris Eshleman may be reached at 459-7582 or [ceshleman@newsminer.com](mailto:ceshleman@newsminer.com).*

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# LEGAL SERVICES

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## MEMORANDUM

February 5, 2007

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

**TO:** Senator Tom Wagoner

**FROM:** Jean M. Mischel  
Legislative Counsel



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

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

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

### 1. Whether the legislature may impeach a regent.

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

**SECTION 20. Impeachment.** All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial

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

Article II, sec. 20 grants a broad power of impeachment to the legislature, in that it applies to all civil officers. This fact was recognized by one of the delegates to the state constitutional convention who observed:

Most of the state constitutions do not set up the removal of all civil officers by impeachment as is done here. It is generally limited to the principal elective and appointive officers, generally the governor, the lieutenant governor, and various other elective department and appointive department heads. The principal officers are the ones that they generally limit impeachment to. (Alaska Constitutional Convention Proceedings, V. Rivers, page 1719.)

The language of art. II, sec. 20, has not been construed by the Alaska Supreme Court. However, the court has declared, "Unless the context suggests otherwise, words are to be given their natural, obvious, and ordinary meaning." (Hammond v. Hoffbeck, 627 P.2d 1052, 1056 n. 7 (Alaska 1981), quoted in Hickel v. Halford, 872 P.2d 171, 177 (Alaska 1994).)

The term "civil office" is defined to be, "a non-military public office; one which pertains to the exercise of the powers or authority of government." (Black's Law Dictionary, sixth ed., 1990.) Under the definition of "officer," Black's Law Dictionary states, "the word 'civil,' as regards civil officers, is commonly used to distinguish those officers who are in public service but not of the military." The dictionary goes on to explain that a public officer is, "one occupying a public office created by law. One of the necessary characteristics of 'public officer' is that he perform public function for public benefit and in so doing he be vested with exercise of some sovereign power of state."<sup>1</sup>

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<sup>1</sup> The court has in the past held that the University of Alaska, as an instrumentality of the state, is within the scope of statutes that govern conditional waiver of sovereign immunity. (University of Alaska v. National Aircraft Leasing, LTD., 536 P.2d 121 (Alaska 1975).) University employees are state employees subject to regulations that establish collective bargaining units for state employees. (McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991).) The public meetings law applies to the university as it applies to other agencies. (University of Alaska v. Geistauts, 666 P.2d 424 (Alaska 1983); Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska, 677 P.2d 886 (Alaska 1984).)

The Alaska Supreme Court has determined that key officials of the University of Alaska serving by appointment, presumably including the members of the Board of Regents, are "public officials." (Carter v. Alaska Public Employees Association, 663 P.2d 916, 921 (Alaska 1983).) It is likely that the court would find a public official to be a civil officer for impeachment purposes as consistent with the ordinary meaning of those terms.

It also is likely that a court would find that University regents are "civil officers" subject to impeachment despite the University's public corporation status. The impeachment process is, as described in the constitution and clarified in the Sheffield hearings, lengthy and involved.

## 2. Grounds for Impeachment and Impeachment Procedure.

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

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

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

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When confronted with the precise question of whether the University of Alaska is covered as an agency of the state under generally worded statutes, the court has tended to find that the university is covered. The court concluded that the legislature intended to include the university within the scope of state agencies that are subject to the public records statute. (Carter v. Alaska Public Employees Ass'n, 663 P.2d 916 (Alaska 1983).) Again, the court found that the application of the Administrative Procedure Act (AS 44.62.330-44.62.650) to the university's grievance procedure does not impermissibly circumscribe explicit and implicit constitutional and statutory grants of power to the university in the area of personnel management. (McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991); see also, Odum v. University of Alaska, 845 P.2d 432 (Alaska 1993) and Sengubta v. University of Alaska, 21 P.3d 1240 (Alaska 2001).)

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

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

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

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

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

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

Another delegate, Mr. Rivers, noted:

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

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

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

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

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

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

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

CHAIRMAN KELLY. Senator Josephson.

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

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

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

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

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

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

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

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

(b) Official misconduct is a class A misdemeanor.

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

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

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

**Senator Tom Wagoner**

**February 5, 2007**

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

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

If I may be of further assistance, please advise.

JMM:med  
07-062.med

Enclosure

ALASKA STATE SENATE



SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR JACK COGHILL  
NENANA  
VICE CHAIRMAN

RULES COMMITTEE

FOR IMMEDIATE RELEASE

July 18, 1985

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

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

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

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

Sincerely yours,

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

Tim Kelly, Chairman  
Senate Rules Committee

# ALASKA STATE SENATE

SENATOR TIM KELLY  
ANCHORAGE/EAGLE RIVER  
CHAIRMAN

SENATOR JACK COGHILL  
NENANA  
VICE CHAIRMAN



## RULES COMMITTEE

MEMBERS  
SENATOR DON BENNETT  
FAIRBANKS

SENATOR JAN FAIKS  
ANCHORAGE

SENATOR JOE JOSEPHSO  
ANCHORAGE

### IMPEACHMENT INQUIRY PROCEDURES

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

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

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

ALASKA STATE SENATE  
RULES COMMITTEE  
IMPEACHMENT  
INQUIRY PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COPY

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

TBC:ojb  
J16/025

# MEMORANDUM

State of Alaska  
Department of Law

To: Talis J. Colberg  
Attorney General

Date: February 2, 2007

Thru: Craig J. Tillery  
Deputy Attorney General

File No: 663-06-0103

Tel. No.: (907) 465-3600

Fax: (907) 465-2520

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

Subject: Governor's Power to Remove  
a University of Alaska Regent

We have been asked whether the Governor has the power to remove a University of Alaska regent without cause. In our view, the answer is no.

We acknowledge that this question has been posed to different counsel and different conclusions reached. Legislative counsel has concluded in a written opinion that regents serve at the pleasure of the governor and may be removed at any time. University of Alaska counsel has concluded in a verbal opinion that a regent may be removed only through impeachment by the legislature.

For the reasons set forth below, we do not fully agree with the conclusions of either legislative counsel or university counsel. That being said, we do agree with both legislative counsel and university counsel that impeachment is an option that may be pursued in order to remove a regent. But we disagree with university counsel that it is the only option.

The basis for our views is grounded primarily in the constitution and discussions of the framers regarding the University of Alaska during the constitutional convention. We start there.

## I. Historical Background

The University of Alaska was created by the territorial legislature in 1935. ch. 49, SLA 1935. The Board of Regents was created at that time as well, with the governor empowered to appoint regents subject to confirmation by a joint session of the legislature. *Id.* at sec. 3. The term of a regent was eight years and a regent was to serve "until their successors are appointed and have qualified." *Id.* The original statute made no mention

of how a regent should be removed. This law has essentially remained unchanged through today, though the number of regents was increased to eleven in 1975. See AS 14.40.120; 14.40.140; AS 14.40.150.

From the University's inception through statehood we are aware of no instance of a governor removing a regent prior to the end of a regent's term. We recognize that it is possible such could have happened, but it would take further historical research to determine this.

The constitutional convention considered the University of Alaska several times during the course of the convention. Before considering these passages, however, it is important to understand that the territory of Alaska had suffered from a fragmented executive branch with several elected officials and multiple governing boards designed to erode the power of the federally appointed governor. A fundamental goal of the convention was to establish a strong governor who was completely in control of the executive branch of government.<sup>1</sup>

During the consideration of the executive branch article, however, concerns were raised regarding the appropriate place for the University of Alaska within the constitutional design for the new government. These concerns were often expressed in terms of the need to insulate education from politics. Alaska Constitutional Convention Proceedings at 2043, 2246. During the discussions of the provisions that ultimately

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<sup>1</sup> Delegate Fischer later wrote, "[Territorial] government was neither responsible nor responsive to the people. As a result, convention delegates were ready to make basic structural changes so the people could hold the governor wholly responsible for the conduct of state administration." V. Fischer, *Alaska's Constitutional Convention* at 106 (1975).

became sections 25 and 26 of Article III,<sup>2</sup> questions were raised concerning the extent to which these sections governed appointments to the Board of Regents. The chair of the Executive Branch Committee, Victor Rivers, and a member of that Committee, Katherine Nordale, both responded that section 26 of Article III only applied to "principal departments" and that the University of Alaska was not a principal department. Alaska Constitutional Convention Proceedings at 2034, 2037, 2246. Therefore, in their mind, the University of Alaska did not fall under section 26 of Article III.

Other delegates, however, remained concerned that in order to insulate the University from politics it needed to be made explicit that the University was not subject to section 26 of Article III. In particular, certain delegates were concerned that if section 26 did apply to the University, that the Board of Regents' appointment of a president would be subject to approval by the governor. Accordingly, these delegates sought to amend section 26 to state that the provision did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2245-2258. Ultimately, these attempts failed because the members of the Executive Branch committee persuaded the convention that section 26 simply did not apply to the University of Alaska. Alaska Constitutional Convention Proceedings at 2246, 2257. Moreover, several delegates noted that a separate article was being drafted to govern the University of Alaska. *Id.* at 2247-48, 2250, 2255.

During the debate, some delegates expressed observations as to the status of the University. The chair of the Executive Committee, Victor Rivers, stated that the Executive Branch article would have no impact on the University:

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<sup>2</sup> Section 25. Department Heads. The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state.

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

Walsh: May I ask a question, Mr. Rivers? I think to clarify in the minds of several people here it might be well for me, that [as] one of those serving on the Board of Regents of the University of Alaska, composed of eight members, and the Board of Regents select the President of the University. The governor, as I understand it, does not have the power of the removal of the president of the University. It is a matter for the Board. Would this situation change that, Mr. Rivers?

Rivers: No, in regard to the University, this would not affect their present setup. They are a private corporation, or rather a nonprofit corporation, and under the specific law providing for their make-up, and you would still have a board of regents appointed by the governor and confirmed by the legislature, and the powers as you now have them would be identical to what they now are as I visualize them.

*Id.* at 2033-34. Delegate Taylor stated that the "University is not a part of the Territorial government whatsoever; it is an independent agency." *Id.* at 2253. Notably, Delegate Nordale expressed the view that by explicitly putting the University in a separate article it would "make it very clear that it can never be dissolved and that it is not part of the executive branch of government." *Id.* at 2256.

Later in the convention, the Executive Branch committee proposed language regarding the University. Chair Rivers introduced the language as follows:

Mr. President, you have heard the reading of this article and it was considered important that in the constitution there be included an article of this type. It gives the University, as a corporate body, the authority to receive and hold property which will be granted to them under the enabling act. It also gives them the authority for administering and disposing of that according to law. It sets up the board of regents and the governing body of the University, and I think the main point of this article has is that constitutionally the University of Alaska shall be the only state university in Alaska.

*Id.* at 2792. Perhaps notably, the Executive Branch committee saw fit to clear the language of the proposed article with the President of the University prior to bringing it to the floor of the convention.<sup>3</sup> *Id.*

## II. Analysis

With this summary of the constitutional history of the University in mind, we think it is fair to draw the following conclusions. First, the convention intended to create a very strong governor with full appointive power. Second, despite the strong governor model, the convention nevertheless intended to insulate the University from politics, including the governor. Third, the convention intended that the University would not be subject to section 26 of Article III of the Alaska Constitution. Fourth, the convention intended to constitutionalize the existence of the University. Finally, some members of the convention believed that the University resided outside the executive branch of government in 1955 and that the constitution preserved that status.<sup>4</sup>

Nowhere in the convention minutes is there any discussion regarding removal of a regent.<sup>5</sup> But the above conclusions are sufficient to give us pause that the governor's power to remove certain executive branch appointees without cause extends to the University Board of Regents. This view is consistent with the views previously expressed by this office. In 1979, we opined:

Under the state constitution, the University of Alaska is 'governed' by the Board of Regents. Alaska Const., art. VII, § 3. The regents are appointed by the governor, subject to confirmation by the legislature. *Id.* They serve for terms of eight years. Thus, while the regents are appointed by and are responsible to the governor, they do not serve at his pleasure but rather for fixed terms, and they may, therefore, be

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<sup>3</sup> In other words, it is doubtful that President Patty, the University president at the time, would have approved this language if he thought it allowed the governor to remove a regent without cause.

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

<sup>5</sup> Though at one point, Chair Rivers states that "[t]he law could provide no doubt for means of removal . . ." *Id.* at 2255-56. He appears to be referring to the chief executive of the University, not the regents, however.

removed from office solely for cause. 67 C.J.S. Officers § 120 (1978); 63 Am. Jur.2d Public Officers and Employees § 189 (1972). As a result, the governor's supervision over the university is made distinctly indirect. Unless the members of the Board of Regents commit acts of malfeasance, misfeasance, or nonfeasance sufficient to constitute cause for their removal, the governor possesses no check upon them and no power to direct their activities.

1979 Inf. Op. Att'y Gen. 1 (Jan. 23; J-66-103-79). We have reiterated this view over the years<sup>6</sup> and see no reason to stray from it today.

For the reasons expressed above, the University is accorded unique constitutional status. We must be mindful of these reasons when considering the applicability of Alaska Supreme Court precedents. A number of these cases have been cited by other counsel, but we doubt that a court would find them controlling on the issue of whether the governor may remove a regent without cause. For instance, *Walker v. Alaska State Mortgage Assoc.*, 416 P.2d 245 (Alaska 1966) does not involve the University of Alaska, but rather pertains to a board of a public corporation that does not have a unique constitutional status. The cases involving the University do not have issues that directly implicate the political independence of the University, one of the reasons for the University's unique constitutional status. See, e.g., *University of Alaska v. Nat'l Aircraft Leasing*, 536 P.2d 121 (Alaska 1975) (University is instrumentality of state for purposes of sovereign immunity); *McGrath v. University of Alaska*, 813 P.2d 1370 (Alaska 1991) (legislature may subject University to Administrative Procedures Act). Instead, we think a court if faced with the issue of whether the governor may remove a regent without cause would be more likely to focus on the constitutional history of the University set forth above.

Finally, legislative counsel contends that under AS 39.05.060(d) regents serve at the pleasure of the governor and may be removed at any time. This interpretation is at odds with the express intention of the constitutional convention that the University be insulated from politics. Moreover, review of the fairly lengthy legislative history of this statute demonstrates that the legislature never intended AS 39.05.060(d) to reach the

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<sup>6</sup> In 1998, an assistant attorney general stated that, "Regents are considered to be sort of in a class by themselves. We've always advised the governor that it's inadvisable to remove the regents at a change of an administration. Legal complications may ensue." 1998 Anchorage Daily News (quoting AAG James Baldwin).

Attorney General Colberg  
Re: Removal of University Regent

February 2, 2007  
Page 7

Board of Regents. This statute was originally enacted as part of the State Organization Act of 1959, under which the executive branch of the new State of Alaska was formed. See ch. 64, SLA 1959. The University of Alaska is not within the scope of this Act—it was not mentioned in the Act and was left out of the organization of the executive branch accomplished by this Act. *Id.* When initially enacted, AS 39.05.060 only referred to boards that were explicitly mentioned in the State Organization Act of 1959. While the scope of AS 39.05.060 has both expanded and contracted over the years, it has never been broadened to include the Board of Regents.<sup>7</sup>

In summary, we conclude that the Governor may only remove a regent if cause is established, preferably at a hearing prior to removal. We would be happy to address in another memo the evidence necessary to establish cause, and the criteria for an appropriate hearing process.

MAB:ajh

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<sup>7</sup> We note, however, that it may be possible for the legislature to provide for removal of a regent through enactment of a statute consistent with the constitution. Such a statute would have to preserve the University's politically independent constitutional status and probably could only provide for removal if it were for some cause that was established at a hearing prior to removal.

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

**Regents Present:**

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

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

**Regents Absent:**

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

**Others Present:**

Jeannie D. Phillips, Executive Officer, Board of Regents

**I. Call to Order**

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

**II. Adoption of Agenda**

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

**PASSED**

**"The Board of Regents adopts the agenda as presented.**

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

**This motion is effective January 23, 2007."**

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

**Regents Present:**

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

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

**Regents Absent:**

James Hayes

**Others Present:**

Jeannie D. Phillips, Executive Officer, Board of Regents

**I. Call to Order**

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

**II. Adoption of Agenda**

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

**PASSED**

**"The Board of Regents adopts the agenda as presented.**

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

**This motion is effective January 19, 2007."**

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

**Regents Present:**

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

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

**Regents Absent:**

Carl Marrs, Treasurer  
Robert Martin

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**Regents Present:**

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

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

**Regents Absent:**

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

**Others Present:**

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

**I. Call to Order**

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

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

**Regents Present:**

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

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

**Regents Absent:**

Jacob Gondek  
Robert Martin

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

**PASSED**

**"The Board of Regents adopts the agenda as presented.**

**I. Call to Order**

**II. Adoption of Agenda**

**III. Executive Session – Status Report/Notification**

**IV. Adjourn**

**This motion is effective October 6, 2006."**

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

**Regents Present:**

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

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

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**VIA AUDIOCONFERENCE**

**Regents Present:**

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

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

**Regents Absent:**

James C. Hayes  
Carl Marrs, Treasurer

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**Regents Present:**

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

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

**Regents Absent:**

James C. Hayes

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**Regents Present:**

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

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

**Regents Absent:**

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

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**Regents Present:**

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

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

**Regents Absent:**

Frances H. Rose

**Others Present:**

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

**I. Call to Order**

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

**II. Adoption of Agenda**

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

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

**Regents Present:**

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

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

**Regents Absent:**

James Hayes

**Others Present:**

Jeannie D. Phillips, Executive Officer, Board of Regents

**I. Call to Order**

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

**II. Adoption of Agenda**

**PASSED**

**"The Board of Regents adopts the agenda as presented.**

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

**This motion is effective January 20, 2006."**

**III. Retreat Discussion**

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

**IV. Adjourn**

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

**FAIRBANKS**  
**Daily News - Miner**

## FOIA requests integral to Hayes investigation

By Staff Report  
 Published March 25, 2007

*With Part 1 of 4*

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

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

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

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

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

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

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

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

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

—Rod Boyce

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# Daily News - Miner

## Nonprofit leaders express dismay at lack of federal oversight

By Sam Bishop

Published March 25, 2007

*With Part 1 of 4*

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

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

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

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

### Views of oversight

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Other safety steps**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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# **Daily News - Miner**

## **LOVE Social Services strives to maintain community outreach**

By Rod Boyce  
Published March 25, 2007

*With Part 1 of 4*

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

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

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

(Read their own progress reports here)

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

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

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

The organization describes its services as follows:

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

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

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

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

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

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

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

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

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

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

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

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# Daily News - Miner

## How the Hayeses secured government grants, built a church and founded a social service organization, all in the name of LOVE

By Rod Boyce  
Published March 25, 2007

Part 1 of 4

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

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

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

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

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

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

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

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

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

### A review of the record

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

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

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

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

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

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

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

(See some of those documents here.)

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

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

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

### **LeeRoy's old church**

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

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

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

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

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

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

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

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

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

#### **Big ideas**

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

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

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

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

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

The paperwork listed \$44,100 for building maintenance that was to include roof and foundation repairs, painting and \$20,000 for an elevator lift. A budget notation lists the items as "Necessary repairs to a building which was built in 1955. Safety issue for roof and foundation. Elevator/lift is ADA requirement for disabled children and visitors to have access to reading and recreation area."

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

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

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

**What about ...**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### On to a new life

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

NEXT: What was and wasn't done?

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FAIRBANKS

# Daily News - Miner

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

By Rod Boyce  
Published March 26, 2007

Part 2 of 4

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

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

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

Here's why:

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

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

(Read documents obtained by the News-Miner here)

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

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

**Lab largesse?**

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

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

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

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

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

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

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

### Questionable listings

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

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

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

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

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

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

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

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

### **The mystery gym**

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

LOVE Social Services doesn't have a gym.

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

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

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

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

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

**NEXT: The pay at the top**

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# Daily News - Miner

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

By Rod Boyce  
Published March 27, 2007

Part 3 of 4

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

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

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

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

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

The public record is unclear and incomplete.

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

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### Gaps with the IRS

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

Also with LOVE Social Services.

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

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

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

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

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

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

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

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

### A tangle of numbers

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

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

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

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

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

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

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

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

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

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

#### **Payment postscript**

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

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