

# **Alaska State Legislature**

## **Select Committee on Legislative Ethics**

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## **SENATE SUBCOMMITTEE COMPLAINT S 12-01**

### **DETERMINATION OF PROBABLE CAUSE**

The Senate Subcommittee (committee) hereby finds there is probable cause to believe that David Scott, Chief of Staff to Senator Donny Olson, violated the Legislative Ethics Act, AS 24.60.033, Restrictions on Employee Candidacies.

The Senate Subcommittee initiated a properly filed complaint against David Scott dated March 13, 2012.

The complaint alleged the following:

- Mr. Scott took several actions in October 2011 that immediately placed him as a candidate for the Ketchikan House seat. Mr. Scott announced his candidacy on October 18, 2011 via a press release to local media outlets in Southeast Alaska and sent the press release to a local Republican Party official who in turn forwarded it to Statewide Republican leaders. He further gave a radio interview to KRBD and KFMI.
- In the eyes of the public and political party officials, Mr. Scott was a candidate and had begun his campaign.
- Mr. Scott's actions required him to either file a Letter of Intent with the Alaska Public Offices Commission or a Declaration of Candidacy with the State Division of Elections indicating he was running for state office and was beginning his campaign.
- Under AS 24.60.033 a legislative employee cannot file a Letter of Intent or Declaration of Candidacy while employed by the Legislature.

### **SCOPE OF INVESTIGATION**

The Senate Subcommittee met on the following dates: March 13, 2012 and March 22, 2012.

- On March 13, 2012 the committee adopted a Scope of Investigation focusing on AS 24.60.033, Restrictions on Employee Candidacies.

*AS 24.60.033 A legislative employee may not file a letter of intent to become a candidate or file a declaration of candidacy for the legislature.*

- On March 22, 2012 the committee reviewed investigative materials.
  - The committee obtained the investigative materials from the Alaska Public Offices Commission (APOC) Complaint 11-16-CD against David Scott initiated on October 26, 2011.
  - Mr. Scott was afforded the opportunity to explain his conduct to the committee under the requirements of AS 24.60.170(d). Mr. Scott declined to appear before the committee.

### **DETERMINATION OF PROBABLE CAUSE**

The Senate Subcommittee finds that after a thorough review of the investigative material the actions of Mr. Scott as outlined above were in violation of AS 24.60.033, Restrictions on Employee Candidacies. Legislative employees must resign prior to filing a letter of intent or declaration of candidacy. The committee relied on the fact that APOC's Final Order for Case No. 11-16-CD issued on February 28, 2012 determined Mr. Scott "violated AS 15.13.100 because he made campaign expenditures before filing a letter of intent or candidate registration." Further, the Commission assessed a penalty of \$350 and required Mr. Scott to "attend an APOC candidate training program within six months of the date of this order."

The subcommittee notes that Mr. Scott contacted the Ethics Office for advice on October 17, 2011 via email. He asked: "I called on Friday and asked about legislative employees prohibition on filing letters of intent or a declaration of candidacy (24.60.033). Is there an advisory opinion on legislative employees and what they can and can't do to prepare for a campaign for the legislature?" Ethics staff responded via a telephone call and informed Mr. Scott that under the Legislative Ethics Act he must resign his legislative position prior to filing a letter of intent or a declaration of candidacy. Staff instructed Mr. Scott to contact APOC for information about a candidacy and reporting requirements. When Ethics staff asked Mr. Scott on October 21 if he had contacted APOC, he responded with a no.

### **RECOMMENDATION**

The subcommittee, under authority of AS 24.60.178, is taking the following action:

- Issuing a public reprimand via this document.
- Notifying Senator Donny Olson, Mr. Scott's employer, of this decision.
- Forwarding a recommendation to the Senate Rules Committee that Mr. Scott be placed on probationary status. (Note: Mr. Scott's "appointing authority" is the Senate Rules Committee pursuant to AS 24.60.176.)

The public reprimand is notice to Mr. Scott, other legislative employees and the public that the committee takes seriously the provisions in statute requiring a legislative employee to resign prior to becoming a candidate. In this case, Mr. Scott made himself a candidate without either resigning or filing the required document. Further, even after he attempted to withdraw his email announcement, he stated in a radio interview that he still intended to run.

The committee finds that Mr. Scott could have avoided this situation by exercising due diligence and good judgment in obtaining necessary information regarding a candidacy and campaigning for a legislative seat from the Alaska Public Offices Commission, the oversight agency responsible for campaigns. Mr. Scott, being a legislative employee, is aware of the fact that APOC governs campaigns. Lack of action on Mr. Scott's part does not "maintain high moral and ethical standards among public servants in the legislative branch of government" which "are essential to assure the trust, respect, and confidence of the people of this state". AS 24.60.010(1). On the other hand, Mr. Scott's actions give the distinct impression that he was trying to run for office without resigning employment. The committee echoes the language in AS 24.60.010(2) which states a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoid conflicts of interest or even appearances of conflicts of interest. All who serve the legislature have a solemn responsibility to avoid improper conduct or bear the consequences.

The committee recommends to the Senate Rules Committee (pursuant to AS 24.60.176) that Mr. Scott be placed on probation effective immediately. The committee recommends the conditions of probation stipulate that Mr. Scott refrain from conducting activities or taking any action related to his campaign for the legislature while employed by the legislature or on lay-off status. A legislative employee on lay-off status is considered by the LAA Personnel office to be an "employee," although in an inactive or zero pay status. Probation would terminate when Mr. Scott resigns or fails to file a letter of intent or declaration of candidacy as required by statute for the 2012 legislative elections. Filing for office deadline is no later than 5:00 pm. on June 1<sup>st</sup>.

If Mr. Scott violates the conditions of his probation the committee recommends immediate termination of his legislative employment. Further, the committee reserves the right to recommend financial sanctions if he violates the conditions of his probation.

Adopted this 22th day of March 2012 by a majority of the Senate Subcommittee.

/s/

Dennis "Skip" Cook, Chair

Members Participating

Dennis “Skip” Cook, Chair

Senator John Coghill

Antoinette “Toni” Mallot

Senator Gary Stevens

H. Conner Thomas, Vice Chair

(Participating by teleconference)

Gary J. Turner

Member not Participating

Herman G. Walker, Jr.