

Alaska State Legislature

Select Committee on Legislative Ethics

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SENATE SUBCOMMITTEE COMPLAINT S 12-02

DISMISSAL ORDER

The Senate Subcommittee (committee) investigated allegations contained in complaint S 12-02 and determined the following:

1. The Senate Subcommittee received a properly filed complaint against Senator Lyman Hoffman dated November 20, 2012. The Senate Subcommittee amended the complaint on February 26, 2013, to include Allegation 4(d).
2. The complaint and amended complaint alleged the following:

Allegation 4(a): Did Senator Hoffman violate AS 24.60.070 of the Act:

A legislator ... shall disclose to the committee, ... the formation or maintenance of a close economic association involving a substantial financial matter with ... legislators; ... A disclosure under this section must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association.

in that Senator Hoffman failed to provide “sufficient detail” for the joint business ventures with another legislator for the years 2009, 2010, and 2011.

Allegation 4(b): Did Senator Hoffman violate AS 24.60.040(a) of the Act:

A legislator ..., or a member of the immediate family of a legislator ..., may not be a party to or have an interest in a state ... lease unless the ... lease ... is let under AS 36.30 (State Procurement Code) or, for agencies that are not subject to AS 36.30, unless similar procedures, or the total annual amount of the state ... lease is \$5,000 or less, or is

a standardized ... lease that was developed under publicly established guidelines and is generally available to the public at large, members of a profession, occupation, or group. A person has an interest in a state ... lease under this section if the person receives direct or indirect financial benefits. A legislator ... who participates in, or who knows or reasonably should know that a family member is participating in, a state ... lease that has an annual value of \$5,000 or more shall disclose the participation to the committee by the date required under AS 24.60.105.

in that Senator Hoffman did not disclose a State land lease for a New York Creek Associates gold claim operation for the years 2009, 2010, 2011 and 2012.

Allegation 4(c): Did Senator Hoffman violate AS 24.60.030(g) of the Act:

Unless required by the Uniform Rules of the Alaska State Legislature, a legislator may not vote on a question if the legislator has an equity or ownership interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect on a substantial class of person to which the legislator belongs as a member of a profession, occupation, industry, or region.

in that Senator Hoffman, as co-chair of the Senate Finance Committee in 2009, 2010, 2011 and 2012 scheduled and heard bills which included funding for school transportation and voted on legislation which included funding for school transportation when he had a substantial interest in an enterprise that provided pupil transportation.

Allegation 4(d): Did Senator Hoffman violate AS 24.60.030(f) of the Act:

. . . A legislator or legislative employee who serves on a board of an organization, including a governmental entity, shall disclose the board membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves. The committee shall maintain a public record of the disclosure and forward the disclosure to the appropriate house for inclusion in the journal. . . .

in that Senator Hoffman failed to disclose membership on the board of at least one organization and possibly up to six from 2007 through 2013 that are listed with Department of Commerce, Community and Economic Development. With the passage of HB 109 in 2007, the requirement to disclose membership on a board of

an organization was no longer predicated on the fact the board may have an interest in legislative matters. Effective July 10, 2007, all board memberships required disclosure.

SCOPE OF INVESTIGATION:

The Senate Subcommittee met on the following dates: November 20, 2012; February 26, 2013; and October 28, 2013.

On November 20, 2012, the committee adopted a Scope of Investigation focusing on Allegations 4(a) through 4(c). On February 26, 2013, the committee adopted an amended Scope of Investigation adding Allegation 4(d). Senator Hoffman was informed of the additional allegation via a telephone call on January 27 and also by letter sent to his personal email address on the same date.

On October 28, 2013, the committee reviewed the investigative material. Senator Hoffman appeared before the committee on October 28, 2013, to explain the allegations. He was accompanied by legal counsel. AS 24.60.170(r).

The committee's investigation included:

- Ten interviews.
- Alaska Public Offices Commission 2012 investigation of Senator Hoffman for filing incomplete Legislative Financial Disclosures in March 2009, 2010, 2011, 2012, and 2013.
- Senator Hoffman's Legislative Financial Disclosures filed in March 2009, 2010, 2011, 2012, and 2013 on file with the Alaska Public Offices Commission.
- Senator Hoffman's federal tax returns for the years 2009, 2010, 2011, and 2012,
- Senator Hoffman's legislative ethics disclosures for the years 2009, 2010, 2011, 2012, and 2013.
- Golden Eagle Unlimited, LLC, school bus transportation contract for the Lower Kuskokwim School District (LKSD) for the 2008-09 school year with extensions through 2011-12 and the contract for 2012-13 with possible extensions through 2015-16.
- LKSD March 7, 2008 board minutes and audio of the meeting.
- LKSD May 20, 2013 board minutes.
- Alaska Division of Corporations, Business and Professional Licensing information on the following businesses: Bethel Drilling and Welding Service, Inc.; Blue Sky Estates, Inc.; Golden Eagle Unlimited, Inc.; Kisarelik Unlimited, Inc.; New York Creed Associates, Inc.; Bethel Solutions Incorporated; BNC International, Inc.; and Venes Properties LLC.
- Senator Hoffman's legislative committee assignments for the years 2007 through 2013 and bills sponsored or co-sponsored.
- Advisory Opinion 2013-02, Board Membership, and 2004-02, Conflict of Interest, Legislation/Employment,

- Various emails between Senator Hoffman and the Ethics Office from 2009 to 2013.
- Legislation involving school pupil transportation for the years 2009 through 2013.
- Another legislator's corresponding documents regarding ethics disclosures and legislative financial disclosures.

DISMISSAL ORDER

On October 28, 2013, the committee dismissed all four allegations outlined in Complaint S 12-02 for the following reasons:

Allegation 4(a). The committee determined Senator Hoffman's "close economic association" was incomplete in that he failed to provide "sufficient detail" for the joint business ventures with another legislator for the years 2009, 2010, and 2011. (Note: Senator Hoffman's 2012 and 2013 "close economic associations" disclosures were properly completed after input from the Ethics Office in early 2012.) AS 24.60.070 requires that a close economic association disclosure must be sufficiently detailed that a reader of the disclosure can ascertain the nature of the association. In 2009, Senator Hoffman's disclosure stated, "Business Partner in Bethel Businesses. In 2010 and 2011 his disclosure stated, "Joint Business Venture." The committee determined that Senator Hoffman and another legislator were involved in five business ventures during the time period in question.

The committee determined the disclosures were "incomplete." However, the committee was also charged, under the requirements of AS 24.60.260, with determining if Senator Hoffman "knowingly" provided an incomplete disclosure to the committee. The Legislative Ethics Act defines "knowingly" with the meaning given in AS 11.81.900(2).

The committee determined based on the interviews conducted and testimony from Senator Hoffman that they could not determine with confidence that Senator Hoffman "knowingly," i.e., was aware that the conduct is of that nature, filed an incomplete disclosure under the conditions set out in AS 11.81.900(2).

However, the committee would like to point out that Senator Hoffman has attended four mandatory ethics training sessions during the time period 2008 through 2013. The subject of disclosures was discussed at each of the training sessions along with the importance of submitting disclosures on time and with information that is sufficiently detailed to be understandable by the public. The committee stated that Senator Hoffman should have known the information was required. Senator Hoffman has been a legislator since 1987.

When Senator Hoffman appeared before the committee he agreed that more detail should have been provided on the disclosures. He stated he will make sure sufficient information is provided in the future.

Allegation 4(b). The Senate Subcommittee determined the cost for the annual state land lease for New York Creek Associates, Inc. was less than the reporting threshold of \$5,000 or more as stipulated in AS 24.60.040. Therefore, no disclosure was required.

Allegation 4(c). The Senate Subcommittee investigated whether Senator Hoffman declared a conflict of interest in Senate Finance committees and whether he declared a conflict of interest on the Senate floor when legislation regarding pupil transportation was up for a vote during the time period 2008 through 2013. The committee determined that Senator Hoffman has had a “substantial financial interest” in pupil transportation during the years in question. He is listed as one of three owners of Golden Eagle Unlimited, Inc., a company on contract with the LKSD to provide school bus transportation for the “area comprised of the Bethel, Alaska road system.” The contract with the LKSD for the school year 2008-09 was a four-year contract with an extension of one year upon mutual consent by both parties. The contract was negotiated for an amount of \$928,583.28 per year. The contract negotiated for the 2013-14 school year is a three year contract with two one-year extensions upon mutual consent by both parties. The contract amount is \$1,094,186 per year. The contract states, “Compensation for services described herein shall be adjusted during the second and each remaining year of the Contract up or down to coincide with the average annual change in the July to July Anchorage Metropolitan Consumers Price Index for all urban Consumers (CPI-U) as published by the US Department of Labor, Bureau of Labor Statistics. In no event, however may the contract rate be increased by more than ten percent (10%) over the rate of the previous year.”

Six legislative bills were heard during this time period addressing pupil transportation: SB 273 and HB 240 in 2008, HB 317 in 2010, SB 182 in 2012, and SB 120 and SB 57 in 2013. Under AS 24.60.030(g) a legislator with a substantial financial interest such as an equity or ownership in a business may not vote on a question if the interest is greater than the effect on a substantial class of person to which the legislator belongs as a member of a profession, occupation, industry, or region unless required by the Uniform Rules of the Alaska State Legislature. Uniform Rule 34(b) states a member may not be permitted to abstain except upon the unanimous consent of the membership. The committee determined in Advisory Opinion 04-02 that the requirement to declare a conflict of interest only applies to voting on the floor of the appropriate house. “The committee also finds for purposes of this opinion that AS 24.60.030(g) should not be applied to voting in committee.”

SB 240, introduced in 2008, was heard and held in Senate Finance. Senator Hoffman was not required to declare a conflict of interest. Committee minutes show he did not declare a conflict of interest. HB 317, introduced in 2010, was heard in the House Education committee and did not receive any further action; and HB 120, introduced in 2013, was heard in the House Finance committee and did not receive any further action. The bills were not heard in the Senate.

Senator Hoffman declared a conflict of interest on the Senate floor in 2008, 2012, and 2013. Objections were heard each time and Senator Hoffman was required to vote. He voted ‘yea’ on all bills.

Official records indicate:

- SB 57, An Act relating to parental involvement in education, adjusting pupil transportation funding; amending the time required for employers to give tenured teachers notification of their nonretention; and providing for an effective date.
 - SB 57 was heard in Senate Finance on March 28 and April 2, 2013. Senator Hoffman was not required to declare a conflict of interest. Committee minutes show he did not declare a conflict of interest.
 - Senator Hoffman declared a conflict of interest on the Senate floor on April 5, 2013 when SB 57 was heard. He stated, "Mr. President, I'd like to give notice that I have a potential conflict as I have interest in a company that provides transportation services under this bill."
- SB 182, An Act amending the amount of state funding provided to school districts for pupil; relating to the vocational and technical instruction funding factor for public school finding; establishing in the Department of Education and Early Development a voluntary parent and early childhood education program for pre-elementary aged children; and providing for an effective date.
 - SB 182 was heard in Senate Finance on March 29 and March 30, 2012. Senator Hoffman moved the bill out of committee on March 30. Senator Hoffman was not required to declare a conflict of interest. Committee minutes show he did not declare a conflict of interest.
 - Senator Hoffman declared a conflict of interest on the Senate floor on April 2, 2012 when SB 182 was heard. He stated, "I would like to declare that I do have an interest in student transportation. Therefore I do have a conflict."
- HB 273, An Act relating to school funding; funding for student transportation series, the base student allocation, district cost factors, and the adjustments for intensive services and average daily membership calculations; and providing for an effective date.
 - HB 273 was heard in Senate Finance on February 28, 2008. Senator Hoffman chaired the meeting. Senator Hoffman was not required to declare a conflict of interest. Committee minutes show he did not declare a conflict of interest.
 - Senator Hoffman declared a conflict of interest on the Senate Floor on March 3, 2008 when HB 273 was heard. He stated, "I would like to declare a conflict of interest since I have an interest in a company that provides school transportation and I ask to not be able to vote."

Allegation 4(d): Based on the interviews and Senator Hoffman's testimony at the committee meeting, the Senate Subcommittee determined Senator Hoffman had no intent to hide the board memberships. The Senate Subcommittee determined Senator Hoffman "inadvertently" did not disclose board memberships on the boards of Bethel Drilling and Welding Service, Inc.; Blue Sky Estates, Inc.; Kisarelik Unlimited, Inc.; New York Creek Associates, Inc.; Bethel Solutions Incorporated; and BNC International, Inc. Senator Hoffman is part owner of all these entities. Note: AS 24.60.260(c) uses the terms: inadvertent, willful and late when describing the filing of disclosures.

Senator Hoffman stated at the committee meeting that he viewed ownership in an entity in a different manner from board membership. He stated in his interview that since 2009 (the first year listed in the complaint) staff has prepared his ethics disclosures. Staff would look at the prior year forms and fill out the current year forms. He would then look at the filled out forms and only make changes as necessary. Senator Hoffman stated he will list these board memberships on future ethics disclosures and is now aware of listing all future board memberships as well.

COMMITTEE COMMENT REGARDING DISCLOSURE

The committee echoes the statement in Advisory Opinion 09-08 regarding disclosure, "Ethics disclosure requirements are based in part on the principle that certain potential conflicts of interest, once in the open, pose less of a threat to the public's confidence in government than they might if they were not revealed."

RECOMMENDED CORRECTIVE ACTION

The committee is requesting that Senator Hoffman submit a "board membership" disclosure for the year 2013 with the additional board memberships as outlined in this decision. Senator Hoffman has two weeks from the date of receipt of this decision to submit the disclosure before fines are imposed pursuant to AS 24.60.260. If the disclosure is late, the committee will consider the late filing was "willful" under AS 24.60.260. The fine for a willful late filing is \$100/day up to \$2,500.

Adopted this 28th day of October 2013
by a majority of the Senate Subcommittee

/s/

H. Conner Thomas, Chair

Members Participating

H. Conner Thomas, Chair

Dennis "Skip" Cook

Janie Leask

Gary J. Turner

Senator Anna Fairclough (alternate member)

Senator Berta Gardner

Member Absent

Herman G. Walker, Jr.