

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 10-01

DETERMINATION OF PROBABLE CAUSE ALLEGATIONS 1, 3(a)(2), 4, and 7(b)

DISMISSAL ORDER AND DECISION ALLEGATIONS 2, 3(a)(1), and 3(b), 5, 6, and 7(a).

The House Subcommittee received a properly filed complaint against Representative Bob Lynn dated November 3, 2010. The complaint contained seven allegations. Each one will be addressed separately in this public decision. Allegation 3 was subdivided into Allegation 3(a) and Allegation 3(b). Allegation 3(a) was then subdivided into Allegation 3(a)(1) and Allegation 3(a)(2). Allegation 7 was subdivided into Allegation 7(a) and Allegation 7(b).

The complaint alleged the following:

Allegation 1 stated Rep. Lynn included in his May-June legislative end-of-session newsletter to constituents a statement that he was running for another term. The actual statement is as follows: "Reporting a Fact: I have filed for a new term as your State Representative." The complaint alleged this statement had no legislative purpose, did not benefit anyone but Rep. Lynn and was a "re-elect me" message.

Allegation 2 stated Rep. Lynn sent out a "Telephone Handy Dandy" card to his constituents in May-June containing legislative contact information and voting information. The complaint alleged the card had no legislative purpose, inappropriately included legislative contact information, inappropriately included voting information and was for the sole purpose of name recognition during voting time.

Allegation 3(a)(1) stated Rep. Lynn's "Telephone Handy Dandy" card contained select community and business contact information and left out phone numbers for businesses in

competition with those listed. Listed on the card were the following businesses: Century Theater, Dimond Cinema, Tikahtnu Stadium 16, Anchorage Daily News, Chugach Electric, Enstar Gas, Garbage, Phone ACS, Phone GCI, and GCI Cable Modem. The complaint alleged the card had no legislative purpose and provided a private benefit to Rep. Lynn.

Allegation 3(a)(2) stated Rep. Lynn's "Telephone Handy Dandy" card contained select community and business contact information and left out phone numbers for businesses in competition with those listed "even if fine print disclaimers [are printed on the card] which generally go unread are made." Rep. Lynn's disclaimer read as follows: "Private businesses displayed on this form are for reference only. There is absolutely no endorsement, recommendation, or support, actual or implied, of any kind whatsoever." The complaint alleged the card had no legislative purpose and provided a private benefit to the for profit competitive businesses even with a fine print disclaimer provided by Rep. Lynn.

Allegation 3(b) stated Rep. Lynn's "Telephone Handy Dandy" card "promote[ed] politically friendly businesses" and advertised contact information for businesses found worthy by individual legislators. The complaint alleged the card had no legislative purpose and used state resources to promote and advertise contact information for businesses found worthy by an individual legislator even with a fine print disclaimer provided by Rep. Lynn.

Allegation 4 stated Rep. Lynn's campaign web site contained legislative contact information, specifically his Juneau contact information and Anchorage contact information, in addition to campaign contact information from November 2009 to at least the end of July 2010. The complaint alleged the inclusion of this information was not an appropriate use of legislative contact information, inappropriately burdened state resources with campaign activity and put political competitors at an underserved advantage.

Allegation 5 alleged that including legislative contact information on Rep. Lynn's campaign web site coupled with the fact that his chief of staff is his campaign treasurer and a former employee who worked for Rep Lynn until mid to late February 2010 was his campaign deputy treasurer created a "high likelihood that contact would be made with the campaign Treasurer or Deputy Treasurer operating in their legislative capacity."

Allegation 6 stated Rep. Lynn's end-of-session newsletter contained "feel good" campaign advertising materials and "various sections with former public officials and statements like his favorite quotes." The complaint alleged this information provided a private benefit to Rep Lynn, had no legislative purpose and was solely for campaign-related image advertising.

Allegation 7(a) stated Rep. Lynn discussed in his end-of-session newsletter the August 24 Primary and described and characterized the political positions of some, but not all, of the Republican candidates for Governor and Lt. Governor. The specific statements are as follows: [emphasis as noted in the end-of-session newsletter]

- "Rep. Ralph Samuels was the only one in the entire legislature to vote against AGIA – and by the way, Samuels is running against Sean Parnell for governor in the August 24th Republican Primary Election."

- “In January, Governor Parnell attempted to address some of these concerns with new tax credits for all drilling and work expenses, as well as allowing companies to use tax credits in all one year, rather than. Good move.”
- “This is the pipeline favored by the late **Governor Hickel**, and now by gubernatorial candidate **Bill Walker**.”
- “Enstar Gas likes the bullet line proposals, and it being pushed by **Rep. Jay Ramras**, a candidate for Lieutenant Governor from Fairbanks.”
- “**Sen. Hollis French** a Senate Democrat (and a candidate for governor) initiated a Senate Judiciary Committee companion bill, SB 284 that came to be almost identical to my HB 409.”
- “Instead, **Rep. Ramras** said he would hear SB 348 – Democrat Gubernatorial candidate **Sen. Hollis French’s** Judiciary Committee companion bill.”

The complaint alleged the statements did not have a legislative purpose, provided a private benefit to Rep. Lynn and were re-elect me in nature.

Allegation 7(b) stated Rep. Lynn in his end-of-session newsletter described several pieces of legislation he intended to pursue in the next legislative session and a statement that he hopes to be in the legislature in January. The specific statements are as follows:

- “I will likely file a resolution next session on that subject, and push the administration to consider legal action against the federal government based on the 10th Amendment.”
- “I remain optimistic about both the TransCanada and Denali big diameter pipeline efforts – but I’m prepared to evaluate alternatives if necessary.”
- “If reasonable adjustments to the tax structure can generate more oil and gas, I’ll consider it – so long as Alaska gets a *fair* return.”
- “I’ll continue basing decisions based on evidence available at the time, plus constructive input from constituents. Oil and gas producers work for their shareholders. I do too. My “shareholders” are my constituents.”
- “I’ll never give up hope. I hope to be in the legislature in January to file a similar “legal presence” requirement for a driver’s license. Your support of “legal presence” for a license is required.”

The complaint alleged the statements did not have a legislative purpose, provided a private benefit to Rep. Lynn and were re-elect me in nature.

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: November 23, 2010 and December 13, 2010.

On November 23, 2010, the subcommittee adopted a Scope of Investigation. No specific statutes were referenced in the complaint. The subcommittee determined, based on the allegations in the complaint, the following sections of the Legislative Ethics Act, AS 24.60, were applicable:

AS 24.60.030(a)(2) [emphasis added]

A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of ... the legislator, ... or another person;

AS 24.60.030(a)(2)(J) [emphasis added]

...; this paragraph does not prohibit a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

AS 24.60.030(a)(5) [emphasis added]

A legislator or legislative employee may not use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning;

AS 24.60.030(b) [emphasis added]

A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

AS 24.60.90(a)(2) defines benefit as including all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for.

AS 01.10.060(8) defines a person as including a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

The subcommittee conducted an investigation by reviewing and analyzing the following materials:

- The above named statutes.
- Applicable advisory opinions, especially Advisory Opinion 07-07, Use of legislative contact information when campaigning and included on campaign materials.

- Rep. Lynn’s end-of-session newsletter.
- Rep. Lynn’s “Telephone Handy Dandy” card.
- Rep. Lynn’s interview comments.
- APOC Case No. 10-17-CD, Alaska Energy First v. Rep. Bob Lynn.
- Rep Lynn’s primary and general campaign contribution list.
- State Corporate Groups active as PACS (Political Action Committees) in 2010.
- Other background materials .

The subcommittee determined Rep. Lynn wrote his own newsletter and inserted the graphics, took the CD to a printer and then took the printed newsletter to a private mail house for distribution. Rep. Lynn’s staff reviewed the newsletter and telephone card for accuracy and typographical errors. It is important to note that Rep. Lynn’s Telephone Handy Dandy card also contained listings for: police and fire emergency numbers, Anchorage city offices, non-emergency Anchorage city numbers, libraries, schools, voting and military information, and the numbers to call for time and weather.

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee found “probable cause” that the actions of Rep. Bob Lynn referred to in Allegation 1, Allegation 3(a)(2), Allegation 4, and Allegation 7(b) were in violation of the Legislative Ethics Act, AS 24.60.

Allegation 1: The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), use of state resources for the private benefit of Rep. Lynn, AS 24.60.030(a)(2)(J), a communication expressly advocating the election of Rep. Lynn and for the private benefit of Rep. Lynn, and AS 24.60.030(a)(5), the use or authorization of the use of state resources for campaigning. The subcommittee determined the statement contained in Rep. Lynn’s end-of-session newsletter “Reporting a Fact: I have filed for a new term as your State Representative.” was a “vote for me” statement and advocating for his election. The committee relied upon the definition of benefit in AS 24.60.990(a)(2).

Allegation 3(a)(2): The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), use of state resources for the private benefit of a person. The subcommittee determined listing selective for profit competitive businesses on Rep. Lynn’s Telephone Handy Dandy card implied endorsement of these business which in turn provided a private benefit to a person [an entity] as defined in AS 01.10.060(8). The committee relied upon the definition of benefit in AS 24.60.990(a)(2). The subcommittee determined Rep. Lynn’s disclaimer, or a disclaimer of any kind, was not sufficient to nullify the receipt of a private benefit by the for profit competitive businesses listed on the card.

The subcommittee notes legislators may list public entities and regulated utilities on such a card or in a communication to constituents without violating the provisions of AS 24.60.030(a)(2).

Allegation 4: The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(5), the use or authorization of state resources for the purpose of campaigning, and AS 24.60.030(b), requiring a legislative employee to perform services on government time that assist in candidate activities or campaigning. Rep Lynn's campaign web site contained legislative contact information along with the statement "For Legislative Business Only." In Advisory Opinion 07-07 the Ethics Committee determined a legislative phone number is a "state resource." The committee found that it is reasonably foreseeable that listing legislative contact information on campaign materials will result in an increase in the number of campaign-related calls to a legislative office regardless if the legislative office number is conveyed simultaneously with the instruction that it is to be used for legislative business only and a separate number for campaign-related calls. Further, the committee found the inclusion of the legislative office phone *required* or *allowed* legislative staff to handle campaign related phone calls while on government time in violation of AS 24.60.030(b). Legislative employees may respond to unsolicited campaign calls. However, calls generated from a legislative phone number on campaign material do not fall in the unsolicited category nor are they beyond the legislator's control.

The subcommittee noted that the Ethics Office sent an email alert on February 4, 2010, to all legislators focusing on campaign related items. One section of the alert reminded legislators that legislative contact information was not permitted on campaign materials. One of the campaign materials mentioned was campaign web sites. In addition A.O. 07-07 was provided which included an explanation of why legislative contact information should not be contained on campaign materials. Rep. Lynn's web site was not changed until sometime after the legislative session ended in May.

The subcommittee did not address the allegation of "put[ting] political competitors at an underserved advantage" by providing legislative contact information. This allegation does not fall within the jurisdiction of the Legislative Ethics Act.

Allegation 7(b): The House Subcommittee on December 13, 2010, found Rep. Lynn in violation of AS 24.60.030(a)(2), the use of state resources for the private benefit of Rep. Lynn, AS 24.60.030(a)(2)(J), a communication expressly advocating the election of Rep. Lynn and for the private benefit of Rep. Lynn, and AS 24.60.030(a)(5), the use or authorization of state resources for the purpose of campaigning. The subcommittee determined the statements in Rep. Lynn's end-of-session newsletter as outlined in Allegation 7(b) were advocating for his election for another term in the House.

The subcommittee would like to point out that the mention of current and future legislation is not a prohibited activity in a legislative newsletter at any time. However, during an election year when mention is also made the legislator will pursue the legislation in the next legislative session and/or specific mention is made of what action the legislator will take in the next legislative session, these statements leave the reader with the impression the legislator is advocating for votes based on future action the legislator will pursue in the next legislative session.

RECOMMENDATIONS FOR CORRECTIVE ACTION:

The subcommittee recommends no corrective action as allowed under AS 24.60.174. The subcommittee strongly recommends Rep. Lynn forward his 2011 legislative newsletters to the Ethics Committee Administrator for review prior to distributing to constituents. It is further recommended that when Rep. Lynn is notified by the Ethics Administrator of corrective action, such as noted in Allegation 4, that he take expeditious action to correct the violation.

DISMISSAL ORDERS AND DECISIONS

The House Subcommittee dismissed Allegation 2, Allegation 3(a)(1), Allegation 3(b), Allegation 5, Allegation 6 and Allegation 7(a) in that Representative Bob Lynn did not violate provisions of the Legislative Ethics Act, AS 24.60.

Allegation 2: The House Subcommittee on November 23, 2010, dismissed Allegation 2. The subcommittee determined Rep. Lynn's Telephone Handy Dandy card had a legislative purpose, providing constituents with legislative contact information so they can contact their legislator concerning constituent issues and other issues of importance to the constituent; and, therefore including legislative contact information was permitted.

The subcommittee referenced Complaint H 96-02 which determined that providing voter information, i.e., voter contact information, is permitted when communicating with constituents and has a legislative purpose.

The subcommittee further determined the Telephone Handy Dandy card was not mailed for the "sole purpose of name recognition during voting time" as the card was mailed in May-June which was well before the August 24 Primary and the 30 days timeframe before an election recommended by the Ethics Office. AS 24.60.030(a)(2) and AS 24.60.030(a)(5).

Allegation 3(a)(1): The House Subcommittee on December 13, 2010, dismissed Allegation 3(a)(1). The subcommittee determined Rep. Lynn did not receive a private benefit from listing selective for profit competitive businesses on the telephone card. AS 24.60.030(a)(2).

Allegation 3(b): The House Subcommittee on November 23, 2010 dismissed Allegation 3(b). The subcommittee determined there was insufficient credible evidence available to determine that there was a promotion of "political friendly" businesses. AS 24.60.170(c) states, "If the committee determines ... that there is insufficient credible information than can be uncovered to warrant further investigation by the committee, ... the committee shall dismiss the complaint and shall notify the complainant and the subject of the complaint of the dismissal." The committee noted that corporate contributions are prohibited to any candidate's campaign pursuant to AS 15.13.074(f).

Allegation 5: The House Subcommittee on November 23, 2010, dismissed Allegation 5 as vague and having no merit. The subcommittee determined there was insufficient credible evidence available to determine that a “high likelihood that contact would be made with the [Rep. Lynn’s] campaign Treasurer or Deputy Treasurer operating in their legislative capacity.” AS 24.60.170(c) states, “If the committee determines ... that there is insufficient credible information than can be uncovered to warrant further investigation by the committee, ... the committee shall dismiss the complaint and shall notify the complainant and the subject of the complaint of the dismissal.”

The subcommittee further noted that the Legislative Ethics Act does not prohibit legislative employees from serving as campaign treasurers or deputy treasurers and additionally the Ethics Office provides to all legislative offices a Model Office Policy on the procedure to follow when calls, emails, or inquiries are received that are of a campaign nature at a legislative office or by a legislative employee on government time.

Allegation 6: The House Subcommittee on November 23, 2010, dismissed Allegation 6. The subcommittee determined the alleged “feel good” article titled “Political Consultant” did not expressly advocate for Rep. Lynn’s re-election nor was the article clearly only for the private benefit of Rep. Lynn. AS 24.60.030(a)(2), AS 24.60.030(a)(2)(J), AS 24.60.020(a)(5).

The subcommittee determined the alleged “feel good” article on “Family News” was not an implied “re-elect me” statement or for the private benefit of Rep. Lynn. AS 24.60.030(a)(2), AS 24.50.030(a)(2)(J) and AS 24.60.030(a)(5).

The subcommittee determined the allegation of “various sections with former public officials and statements like his favorite quotes” was vague and had no specific documentation as was noted with the other allegations in the complaint. The subcommittee pointed out that it is not the position of the subcommittee to review complaint materials to try to determine the intent of the complainant in regard to allegations of misconduct by legislators.

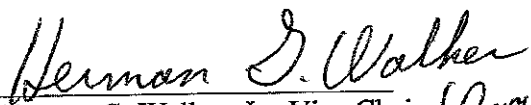
Allegation 7(a): The House Subcommittee on December 13, 2010, dismissed Allegation 7(a). The subcommittee determined the mention of current and former legislators in Rep. Lynn’s end-of-session newsletter along with the fact they are running for a particular office did not violate AS 24.60.030(a)(2) or AS 24.60.030(a)(5), for campaigning. The subcommittee noted the complaint alleged only Republican candidates were listed but Rep. Lynn’s newsletter mentioned one Democrat senator running for governor.

The subcommittee noted there may be a perception of impropriety by including the fact a former or current legislator or other person is a candidate for office and encourages Rep. Lynn and other legislators to voluntarily refrain from this practice to avoid an appearance of campaigning or advocating for a particular candidate.

GENERAL STATEMENT

The subcommittee points out that Rep. Lynn cooperated with the investigation and provided documentation when requested.

Adopted this 13th day of December 2010
by a majority of the House Subcommittee


Herman G. Walker, Jr., Vice Chair *(Over)*

Members Participating

Dennis "Skip" Cook
Representative Berta Gardner
Representative Carl Gatto
Antoinette "Toni" Mallot
Gary J. Turner
Herman G. Walker, Jr., Vice Chair

Member Absent for the December 13, 2010 Meeting
(Note: Present for the November 23, 2010 meeting.)
H. Conner Thomas, Chair