

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 12-04

DETERMINATION OF PROBABLE CAUSE

Allegation 4(a) and Allegation 4(b)

DISMISSAL ORDER

Allegation 4(c) and Allegation 4(d)

The House Subcommittee (committee) hereby finds that there is probable cause to believe that Representative Scott Kawasaki violated the Ethics Code.

The House Subcommittee investigated allegations contained in complaint H 12-04 and determined that:

1. The House Subcommittee received a properly filed complaint against Representative Scott Kawasaki dated April 11, 2012.
2. The complaint alleged the following:
 - ALLEGATION 4(a): That Representative Kawasaki, representing House District 9, received a “private benefit” from using state resources to distribute his March 2012 legislative newsletter to individuals residing outside of his current legislative district, some of whom will be in Representative Kawasaki’s new legislative district under the 2012 redistricting plan in place at the time of the distribution, in violation of AS 24.60.030(a)(2).
 - ALLEGATION 4(b): That Representative Kawasaki, representing House District 9, used state resources to “campaign” in the new district boundaries for the 2012 election by distributing his legislative newsletter to individuals receiving the Fairbanks Daily News-Mirror in zip code 99701, some of whom will be in Representative Kawasaki’s new legislative district under the 2012 redistricting plan in place at the time of the distribution, in violation of AS 24.60.030(a)(5).
 - ALLEGATION 4(c): That Representative Kawasaki, representing House District 9, did not conduct the public’s business in a manner that preserves the integrity of

the legislative process and avoids conflicts of interest or even appearances of conflict of interest when he distributed his March legislative newsletter to individuals not in his current legislative district in violation of AS 24.60.010(2).

- ALLEGATION 4(d): That Representative Kawasaki, representing House District 9, distributed a “political mass mailing,” his March legislative newsletter, to individuals receiving the Fairbanks Daily News-Minor in zip code 99701. The newsletter was “from a legislator” and contained information “about a legislator” in violation of AS 24.60.030(c).

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: April 25, 2012 and June 14, 2012.

On April 25, 2012 the committee adopted a Scope of Investigation focusing on:

- Allegation 4(a):

AS 24.60.030(a)(2) A legislator ... 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.

AS 24.60.990(a)(2) In this chapter, “anything of value,” “benefit,” or “thing of value includes 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;

- Allegation 4(b):

AS 24.60.030(a)(5) A legislator ... may not use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of . . . campaigning;

On April 25, 2012, the committee dismissed Allegation 4(c) and Allegation 4(d) for the following reasons:

- Allegation 4(c). Section 24.60.010, Legislative Findings and Purpose, does not outline specific standards of conduct but rather conveys the foundational principles for the standards of conduct outlined in the Legislative Ethics Act.

AS 24.60.010(2) The legislature finds that a fair and open government required that legislators and legislative employees conduct the public’s business in a manner that preserves the

integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

- Allegation 4(d). The committee determined AS 24.60.030(c) is only applicable during a campaign period which is defined as 60 days before the date of a primary election and ends the day after a general election. The campaign period for 2012 begins on June 29. Representative Kawasaki mailed his legislative newsletter in March.

AS 24.60.030(c) Unless approved by the committee, during a campaign period for an election in which the legislator . . . is a candidate, a legislator . . . may not use or permit another to use state funds, other than funds to which the legislator is entitled under AS 24.10.110, to print or distribute a political mass mailing to individuals eligible to vote for the candidate. In this subsection,, (1) a “campaign period is the period that (A) begins 60 days before the date of . . . a primary election . . . ; and (B) ends the day after the . . . general . . . election; (2) a mass mailing is considered to be political if it is from or about a legislator, . . . who is a candidate for election or reelection to the legislature . . .

On June 14, 2012, the committee reviewed the investigative material for Allegation 4(a) and Allegation 4(b) and heard from Representative Kawasaki.

Background Information:

- Representative Kawasaki filed a Letter of Intent to run for state office in October 2011 with the Alaska Public Offices Commission.
- Timeline of redistricting process through March 2012:
 - June 13, 2011 the Alaska Redistricting Board issued the final redistricting plan proclamation outlining the new district boundaries for the 2012 elections.
 - October 11, 2011 the U.S. Department of Justice approved the plan.
 - February 3, 2012 Alaska Superior Court issued decision to redraw 4 House districts which includes the Fairbanks area.
 - March 14, 2012 Alaska Supreme Court ordered the Alaska Redistricting Board to formulate a new redistricting plan with a stricter adherence to the Alaska Constitution.

DETERMINATION OF PROBABLE CAUSE

Allegation 4(a): The House Subcommittee finds that the newsletter in question was distributed in violation of AS 24.60.030(a)(2), use of state resources for a private benefit. The committee determined some of the recipients of the March newsletter that was

inserted in the Fairbanks Daily News-Mirror newspaper in zip code 99701 were not in Representative Kawasaki's current legislative district; therefore, he received a private benefit from the distribution. The private benefit may be name recognition and associating Representative Kawasaki's name with information on positions and accomplishments before individuals who will be eligible to vote for Representative Kawasaki in the 2012 elections under the new redistricting plan.

The committee commented it is especially important in a year in which "redistricting" occurs to be cognizant of the fact legislative district boundaries are changing. The committee further concluded that the distribution of Representative Kawasaki's March legislative newsletter to residents not in the legislator's district did not have a legitimate legislative purpose.

Allegation 4(b): The House Subcommittee finds that the newsletter in question was distributed in violation of AS 24.60.030(e), use of state resources for campaigning. The committee determined distributing a legislative newsletter to individuals who do not reside in the legislator's current legislative district but reside in an area that comprises part of the new legislative district constitutes campaigning.

In a year in which redistricting occurs it is especially important, with regard to legislative communications, to take note of timing when sending out a newsletter, the content of the newsletter and to whom it is distributed. All three criteria must be within the permissible range or the newsletter could be considered a campaign piece. The committee notes that considerable time is spent on these criteria during ethics training. Further, the September 2011 ethics newsletter, THE ADVISOR, contained articles focusing on what is permitted and prohibited with the use of state resources with regard to legislative communications. The newsletter defined "legislative district" and "constituents" as follows: "A 'legislative district' and 'constituents' for purposes of the Legislative Ethics Act and use of state resources, means the current legislative district to which the legislator was elected to represent. It does not include areas in the new legislative districts approved by the Redistricting Board based on 2010 census figures." The ethics newsletter, required pursuant to AS 24.60.150(a)(3), is one of the resources used to educate legislators and staff about the Legislative Ethics Act and how it applies to real-life situations.

RECOMMENDATION:

Regardless of intent however, the committee recognizes the fact that state resources were used to distribute a legislative newsletter, via the Fairbanks newspaper, to individuals not in Representative Kawasaki's current legislative district. The committee cautions Representative Kawasaki that in the future he should be mindful that state resources used for a general distribution of a newsletter, which includes individuals not within his legislative district or to those who have not asked to be on his distribution list, is prohibited under AS 24.60.030(a)(2) and AS 24.60.030(e).

The committee determined no corrective action was warranted. However, to prevent possible future violations, the committee strongly recommends Representative Kawasaki read the ethics newsletter more judiciously and contact the Ethics Office for clarification or additional information if necessary when applying the information to a fact-specific situation.

The committee points out that Representative Kawasaki's commitment to constituent outreach is commendable; i.e., in-person contact, general newsletter and informational material mailings, distribution of newsletters and informational material via the newspaper and with local businesses and at community meetings/events, individual communications, congratulation letters, graduation letters, etc.



Adopted this 14th day of June 2012
by a majority of the House Subcommittee

Herman G. Walker, Jr., Chair

Members Participating

Herman G. Walker, Jr., Chair
Dennis "Skip" Cook
Antoinette "Toni" Mallott
H. Conner Thomas
Gary J. Turner
Representative Craig Johnson
Representative Chris Tuck