

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 13-01

FINDING OF PROBABLE CAUSE

The House Subcommittee (committee) investigated allegations contained in complaint H 13-01 and determined the following:

1. The House Subcommittee received a properly filed complaint against Representative Bob Herron dated November 21, 2013.
2. The complaint alleged the following:

Did Representative Herron 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 legislation 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 Representative Herron voted on SB 57 on the House floor on April 14, 2013, which included funding for school transportation when he had a substantial financial interest in an enterprise that provided pupil transportation to the Lower Kuskokwim School District (LKSD).

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: November 21, 2013, and January 23, 2014. On November 21, 2013, the committee adopted a Scope of Investigation. On January 23, 2014, the committee reviewed the investigative material. Representative Herron indicated via letter on January 9, 2014, that he did not intend to exercise his right under AS 24.60.170(d) to appear before the committee but would do so if the committee so wished.

The committee's investigation included:

- Portions of Representative Herron's interview of April 30, 2013.
- Golden Eagle Unlimited, LLC, school bus transportation contract with the Lower Kuskokwim School District (LKSD) for the 2012 -2013 school year and 2013-2014 school year.
- Alaska Division of Corporations, Business and Professional Licensing records for Golden Eagle Unlimited, LLC.
- Representative Herron's legislative committee assignments for 2013.
- Legislation involving school pupil transportation for the year 2013.
- House Legislative Journal pages for April 14, 2013, showing official action taken on SB 57.

FINDING OF PROBABLE CAUSE

On January 23, 2014, the committee found probable cause that Representative Herron violated AS 24.60.030(g) of the Legislative Ethics Act in that he failed to disclose a conflict of interest when SB 57, containing language regulating school transportation costs, was heard on the House floor on April 14, 2013. Representative Herron is one of the owners of Golden Eagle Unlimited, LLC, a school bus transportation company, on contract with the LKSD. The state contract for the school year 2012-2013 was approximately \$930,000. On May 20, 2013, another three year contract was signed with the LKSD for \$1,500,087.68 per year.

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 Alaska Legislature Uniform Rules.

Uniform Rule 34(b) states a member may not be permitted to abstain except upon the unanimous consent of the membership. Uniform Rule 31 allows a legislator to rescind previous action of the body and subsequently change his vote or make a motion that he be excused from voting under Uniform Rule 34(b). (Note: 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 opinion clarified that "[t]he committee also finds for purposes of this opinion that AS 24.60.030(g) should not be applied to voting in committee.")

The committee took into consideration that April 14, 2013, was the last day of the 2013 legislative session. However, the committee pointed out that Representative Herron was under investigation at the time and had knowledge that one of the allegations was in relation to declaring a conflict of interest when school transportation legislation was heard on the House floor.

Rep Herron stated in his January 9, 2014, letter to the committee, "... I realized only after the House was at ease that I had made a mistake by not declaring a conflict on the vote." He further stated in his April 30, 2013, interview, "And I figured that with my disclosure

in the ethics filing of having a contract and the amount of the contract that – should I reconsider my vote so that I can put it on the record and I chose not to after talking to a legislator.” The committee points out that Rep Herron should have exercised the option to rescind his vote under Uniform Rule 31 and accordingly declare a conflict of interest under Uniform Rule 34(b).

In Complaint H 12-05, the committee determined the only relevant bill during his service as a legislator (2009 – present) was SB 182. The bill was heard on the House floor on April 15, 2012. Representative Herron declared a conflict of interest by stating, “Announce a conflict of interest. I am a school bus contractor in Bethel. I request should I vote or not.” Objections were heard and under Uniform Rule 34(b) Representative Herron was required to vote.

Failure to declare a conflict of interest is not only in violation of AS 24.60.030(g) but contrary to principle of openness in government. The committee echoes the statements in AS 24.60.010(2) and Advisory Opinion 09-08.

AS 24.60.010(2). The legislature finds that 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 avoids conflicts of interest or even appearances of conflicts of interest.

AO 09-08. “... 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 that they might if they were not revealed.”

RECOMMENDATIONS FOR CORRECTION ACTION and/or SANCTIONS

The committee recommends no corrective action or sanctions as allowed under AS 24.60.178. The committee notes that Representative Herron paid a \$5,000 fine for failure to file legislative ethics State contract disclosures for the first three years of his term and for failure to include State contract information on his Legislative Financial Disclosures (LFD) for the year 2009, 2010, and 2011. Further, Representative Herron paid a civil penalty to the Alaska Public Offices Commission of \$7,446 for incomplete LFDs for the calendar years 2009, 2010 and 2011.

SUPPLEMENTAL COMPLAINT INFORMATION

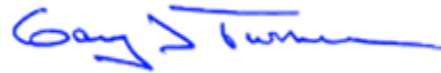
Under AS 24.60.170(g) Representative Herron must either comply with Complaint Decision H 13-01 or request that the House Subcommittee hold a public hearing. A written request to hold a public meeting must be received by the committee within 20 days of receipt of the decision.

Within 20 days after receipt of the decision, Representative Herron has the option to submit a written request to the House Subcommittee asking to have a confidential meeting with the committee. The committee shall explain the reasons for its decision and recommendations. AS 24.60.170(g). Under the committee’s Rules of Procedure section

6(c)(4), the meeting may be in-person or by teleconference. When by teleconference, Representative Herron must state in the request that he waives the in-person requirement and permits the meeting to be held by teleconference.

The committee vote on the decision is not open to the public or to the subject of the complaint. AS 24.60.170(f). A complaint decision issued under this section is open to inspection and copying by the public. AS 24.60.170(g). All documents produced or disclosed as a result of the committee investigation are confidential and not subject to inspection by the public. AS 24.60.170(l). If a public hearing is requested, all documents become public.

Adopted this 23rd day of January 2014
by a majority of the House Subcommittee



Gary J. Turner, Chair

Members Participating

Gary J. Turner, Chair
Dennis "Skip" Cook
Janie Leask
H. Conner Thomas
Herman G. Walker, Jr.
Representative Craig Johnson (alternate member)
Representative Chris Tuck