

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 - 1468

HOUSE SUBCOMMITTEE COMPLAINT H 12-05

FINDING OF PROBABLE CAUSE Allegation 4(a), 4(b), and 4(e)

DISMISSAL ORDER Allegation 4(c) and 4(d)

The House Subcommittee (committee) investigated allegations contained in complaint H 12-05 and determined the following:

1. The House Subcommittee received a properly filed complaint against Representative Bob Herron dated November 20, 2012. The House Subcommittee amended the complaint on February 26, 2013, to include Allegation 4(e).
2. The complaint and amended complaint alleged the following:

Allegation 4(a): Did Representative Herron 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 Representative Herron failed to provide “sufficient detail” for the joint business ventures with another legislator for the years 2009, 2010, and 2011.

Allegation 4(b): Did Representative Herron 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 contract ... unless the contract ... 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 contract ... is \$5,000 or less, or is a standardized contract ... 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 contract ... 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 contract ... 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 Representative Herron failed to disclose a State contract with the Lower Kuskokwim School District for school bus transportation for the years 2009, 2010, and 2011.

Allegation 4(c): Did Representative Herron 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 Representative Herron failed to disclose a State land lease for a New York Creek Associates gold claim operation for the years 2009, 2010, 2011 and 2012.

Allegation 4(d): 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 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 Representative Herron voted on legislation which included funding for school transportation when he had a substantial interest in an enterprise that provided pupil transportation.

Allegation 4(e): Did Representative Herron 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 Representative Herron failed to disclose membership on the board of at least one organization and possibly up to five from 2009 through 2013 that are listed with Department of Commerce, Community and Economic Development.

ADDITIONAL RELEVANT STATUTES

AS 24.60.260(a) A person required to make a disclosure under this chapter may not knowingly make a false or deliberately misleading or incomplete disclosure to the committee or to the Alaska Public Offices Commission.

AS 24.60.990(a)(8) Definitions.

“knowingly” has the meaning given in AS 11.81.990.

AS 11.81.900(2) a person acts knowingly with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance.

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: November 20, 2012; February 26, 2013; and November 21, 2013.

On November 20, 2012, the committee adopted a Scope of Investigation focusing on Allegations 4(a) through 4(d). On February 26, 2013, the committee adopted an amended Scope of Investigation adding Allegation 4(e). Representative Herron was informed of the additional allegation on March 7, 2013.

On November 21, 2013, the committee reviewed the investigative material. Representative Herron appeared before the committee on November 21, 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 Representative Herron's Legislative Financial Disclosures (LFD) filed in 2009 - 2012.
- Representative Herron's Legislative Financial Disclosures for the same time period on file with the Alaska Public Offices Commission.
- Representative Herron's federal tax returns for the same time period.
- Representative Herron's legislative ethics disclosures for the same time period.
- Golden Eagle Unlimited, LLC, school bus transportation contract for the Lower Kuskokwim School District (LKSD) for the same time period.
- LKSD audio and/or board minutes for March 7, 2008, and May 20, 2013 when the school bus transportation contract was approved.
- 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.; and New York Creek Associates, Inc.
- Representative Herron's legislative committee assignments for the years 2009 through 2012 and bills sponsored or co-sponsored.
- Advisory Opinion 2013-02, Board Membership, and 2004-02, Conflict of Interest, Legislation/Employment,
- Various emails between Representative Herron and the Ethics Office from 2009 to 2013.
- Legislation involving school pupil transportation for the years 2009 through 2012.
- Another legislator's corresponding documents regarding ethics disclosures and legislative financial disclosures.

DISMISSAL ORDER

On November 21, 2013, the committee dismissed Allegation 4(c) and Allegation 4(d) for the following reasons:

Allegation 4(c). The House Subcommittee determined that the State land lease for New York Creek Associates, a gold claim operation, did not meet the reporting threshold of \$5,000 per year as required under AS 24.60.040 and therefore dismissed the allegation.

Allegation 4(d). The House Subcommittee determined that Representative Herron declared a conflict of interest when SB 182, containing language for “state funding provided to school districts for pupil transportation”, was heard on the House floor on April 15, 2012 as required under the requirements of AS 24.60.030(g). Accordingly, the committee dismissed the allegation. Representative Herron stated, “Announce a conflict of interest. I am a school bus contractor in Bethel. I request should I vote or not.” No other school transportation legislation was heard on the House floor between 2009 and 2012. Objections were heard and under Uniform Rule 34(b) Representative Herron was required to vote. He voted ‘yea’.

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.”

FINDING OF PROBABLE CAUSE

Allegation 4(a).

On November 21, 2013, the committee found probable cause that Representative Herron was in violation of AS 24.60.260(a) of the Legislative Ethics Act in that he knowingly filed an incomplete Close Economic Association disclosure in 2009, 2010, and 2011 pursuant to the requirements of AS 24.60.070.

To issue a finding of probable cause under AS 24.60.260(a), the committee was charged with evaluating two interconnected components:

- Were Representative Herron’s Close Economic Association disclosures “incomplete”?
- Did Representative Herron “knowingly” make an incomplete disclosure?

Representative Herron’s disclosure was “incomplete” in that he failed to provide sufficient detail for the joint business ventures with another legislator. (Note: Representative Herron’s 2012 and 2013 “close economic association” 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. From 2009 through 2011, Representative Herron’s disclosure stated, “Joint Business Venture” with no

additional detail. The committee determined that Representative Herron and another legislator were involved in five business ventures during the time period in question. All five business ventures should have been listed on the disclosure.

The committee further determined, based on the interviews conducted, investigative materials and testimony from Representative Herron, that he “knowingly” filed incomplete disclosures. The Legislative Ethics Act defines “knowingly” with the meaning given in AS 11.81.900(2). The committee also noted that Representative Herron was a former session-only legislative staffer for eight years from 1987-1994 and served as the City Manager of Bethel from 1998-2005. In both cases, certain ethics disclosures were a mandatory requirement due to the position held in the government entity.

The committee pointed out that when Representative Herron took office in 2009 he attended ethics training along with seven other newly elected legislators. Ethics staff stated ethics training for newly elected legislator is very personalized. Some segments are focused on specific background information provided by legislators for the State Election Pamphlet; i.e., work history, membership in an organization, etc. Representative Herron attended legislator ethics training again in 2011. 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 determined that Representative Herron had knowledge and information that ethics disclosures should contain sufficient information to provide accountability and transparency.

Representative Herron stated to the committee his lack of detail was due to poor reporting rather than a deliberate attempt to conceal information. 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):

On November 21, 2013, the committee found probable cause that Representative Herron was in violation of AS 24.60.260(a) of the Legislative Ethics Act in that he knowingly failed to disclose a State contract with the Lower Kuskokwim School District (LKSD) for the years 2009, 2010, and 2011 pursuant to the requirements of AS 24.60.040.

State contracts with a value of \$5,000 or more must be disclosed on an annual basis. The contract had an approximate value of \$930,000 per year. Representative Herron was asked during his interview if he knew the school bus transportation contract was a State contract and he replied, “Oh, yeah – I know it was – because the – the LKSD, Lower Kuskokwim School District, is a political subdivision, you bet I did.” He further stated he did not know that State contracts required an ethics disclosure.

The committee determined that Representative Herron “knowingly” failed to file a State contract disclosure for the years 2009, 2010, and 2011. The committee based this determination on the fact that Representative Herron was a former legislative staffer and City Manager of Bethel and was most certainly aware of the requirement to file certain disclosures when the issue, in this case a State contract, intersects with the public official’s duties. Further, Representative Herron failed to list the contract as a State contract on his LFD statements for the same time period and did not list the income he received from Golden Eagle Unlimited as well.

Representative Herron stated that everyone in the Bethel area knew of the school bus contract. Legislators are held to a higher standard than the general public. The public has the right to know what State contracts are held by legislators. The public goes to the oversight agencies responsible for gathering this information and expects accurate and complete reports. Failure to disclose, missing information, and insufficient information are an unacceptable standard for an elected official. The requirement to disclose is to prevent undue legislative influence by elected officials when State contracts are awarded and to determine if a conflict of interest exists during the course of performing legislative activities which may be related to the terms and conditions of the State contract. The committee again points out the fact that the State contract was approximately \$930,000 in value.

Allegation 4(e):

On November 21, 2013, the committee found probable cause that Representative Herron was in violation of AS 24.60.260(a) of the Legislative Ethics Act in that he knowingly failed to disclose board memberships on five entities for the years 2009 through 2013, and one additional entity for 2013 pursuant to the requirements of AS 24.60.030(f).

Board memberships for the following entities were not disclosed during the time period 2009 through 2013: Bethel Drilling and Welding Service, Inc.; Blue Sky Estates, Inc.; Kisarelik Unlimited, Inc.; and New York Creek Associates, Inc. Representative Herron is part owner of all these entities. Representative Herron was on the board of directors of RuralCap in 2012-13. He was nominated by the Bush Caucus to serve as the public representative on the board. RuralCap approved the nomination. Because the appointment was not published in the House Legislative Journal, an ethics disclosure was required.

Based on the interviews conducted, Representative Herron’s testimony at the committee meeting, investigative material, and previous statements in this decision for Allegation 4(a) and Allegation 4(b), the committee determined Representative Herron “knowingly” failed to disclose board memberships for the years 2009 through 2013. The formal filings with the Alaska Division of Corporations, Business and Professional Licensing for the five jointly-owned entities shows positions of president, vice president, treasurer, secretary and director with the positions changing every year or so. Further, the committee points out that Representative Herron was aware board memberships required disclosure as he filed a disclosure for serving on the Alaska Public Entity Insurance board of directors.

Representative Herron stated at the committee meeting that he viewed ownership in an entity different from board membership. He stated in the future he would file board memberships for these entities on an annual basis.

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

Allegation 4(a):

Under AS 24.60.178(b)(3), the committee is requesting that Representative Herron submit detailed “close economic association” disclosures for the years 2009, 2010 and 2011. The disclosures are due within two weeks after receipt of the decision. If the disclosures are 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.

Allegation 4(b):

Under AS 24.60.178(b)(1), the committee is imposing a fine of \$5,000 to be paid within one month after receipt of the decision. Representative Herron’s failure to file an ethics State contract disclosure for the first three years of his legislative term in addition to checking ‘no State contract’ on his 2009 LFD and leaving the section blank on his 2010 and 2011 LFD statement was, in the committee determination, not just merely an oversight or poor reporting. Representative Herron stated during his interview that he knew the contract with the Lower Kuskokwim School District was a State contract.

Under AS 24.60.178(b)(3), the committee is requesting that Representative Herron submit a State Contract disclosure for the years 2009, 2010, and 2011. The disclosures are due within two weeks after receipt of the decision. If the disclosures are 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.

Allegation 4(e): Under AS 24.60.178(b)(3), the committee is requesting that Representative Herron submit “board membership” disclosures for the years 2009 through 2013 as stipulated. The disclosures are due within two weeks after receipt of the decision. If the disclosures are 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.

SUPPLEMENTAL COMPLAINT INFORMATION

Under AS 24.60.170(g) Representative Herron must either comply with Complaint Decision H 12-05 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 21st day of November 2013
by a majority of the Senate Subcommittee



Digitally signed by gjturner
DN: dc=edu, dc=alaska, dc=ad, dc=ua,
ou=userAccounts, cn=gjturner,
email=gjturner@kpc.alaska.edu
Date: 2013.12.05 12:51:00 -09'00'

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