

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 12-06

FINDING OF PROBABLE CAUSE

The House Subcommittee (committee) investigated allegations contained in complaint H 12-06 and determined the following:

1. The House Subcommittee received a properly filed complaint against Representative Herron dated November 20, 2012.
2. The complaint alleged the following:

Did Representative Herron violate AS 24.60.260(a) of the Act:

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.

in that he failed to provide all the required information on his 2009, 2010, and 2011 Legislative Financial Disclosures (LFD) pursuant to the requirements of AS 24.60.200, Financial Disclosure by Legislators.

AS 24.60.200. Financial Disclosures by Legislators

A legislator, a public member of the committee, and a legislative director shall file a disclosure statement, under oath and on penalty of perjury, with the Alaska Public Offices Commission giving the following information about the income received or deferred income, earned or otherwise, to be received by the discloser, the discloser's spouse or domestic partner, the discloser's dependent children, and the discloser's nondependent children who are living with the discloser:

- (1) *the information that a public official is required to report under AS 39.50.030 , other than information about*
 - (A) *income received as compensation for personal services;*
 - (B) *a loan or loan guarantee;*
 - (C) *gifts;*
- (2) *as to income or deferred income in excess of \$1,000 earned or received as compensation for personal services, and as to dividend income or deferred compensation in excess of \$1,000 received from limited liability company as compensation or deferred compensation for personal services, a statement describing*
 - (A) *the names and addresses of the source and the recipient;*
 - (B) *the amount;*
 - (C) *whether it was or will be earned by commission, by the job, by the hour, or by some other method;*
 - (D) *the dates and approximate number of hours worked or to be worked to earn it; and*
 - (E) *unless required by law to be kept confidential, a description sufficient to make clear to a person of ordinary understanding the nature of each service performed or to be performed and the date the service was performed or will be performed;*
- (3) *as to each loan or loan guarantee over \$1,000 from a source with a substantial interest in legislative, administrative, or political action, the name and address of the person making the loan or guarantee, the amount of the loan, the terms and conditions under which the loan or guarantee was given, the amount outstanding at the time of filing, and whether or not a written loan agreement exists.*

ADDITIONAL RELEVANT STATUTE

AS 24.60.990 Definitions.

(a)(8) "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 the allegation. On November 21, 2013, the committee reviewed the investigative material. Representative Herron appeared before the committee on November 21, 2013, to explain the allegation. He was accompanied by legal counsel. AS 24.60.170(r).

The committee's investigation included:

- Ten interviews.
- Alaska Public Offices Commission (APOC) 2012 investigation of Representative Herron's Legislative Financial Disclosures filed in 2009 - 2012.
- Representative Herron's Legislative Financial Disclosures for the same time period on file with APOC.
- 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.

FINDING OF PROBABLE CAUSE

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 incomplete Legislative Financial Disclosure statements in 2009, 2010, and 2011.

The committee relied not only on the 2012 investigation conducted by APOC of Representative Herron LFD's but also interviews and other documentation obtained during the committee's investigation in reaching this decision.

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

- Was Representative Herron's LFD statements "incomplete"?
- Did Representative Herron "knowingly" make an incomplete disclosure?

The committee determined that Representative Herron's LFD disclosures were "incomplete" in multiple areas within each document. Based on APOC's investigation, Representative Herron failed to disclose substantial amounts of income. The ascertainable amount of income missing from the statements was in the range of \$98,000 to \$220,000. Income missing was related to Representative Herron's partnership in Golden Eagle Unlimited, Inc. (on contract with the Lower Kuskokwim School District to provide pupil transportation), dividends, capital gains, and legislative salary. APOC also determined that Representative Herron failed to include portions of the required information that did not have an ascertainable value. He failed to list the joint business ventures he shared with another legislator even though he did list that he had a "close economic association" with the legislator. Under real property interests, Representative Herron disclosed ownership of a property but failed to disclose his spouse and another legislator and the legislator's spouse as co-owners. He also failed to disclose that Golden Eagle Unlimited Inc. was a State contract.

The committee further determined that Representative Herron "knowingly" prepared and filed incomplete LFD statements with APOC in 2009, 2010, and 2011. The Legislative Ethics Act defines "knowingly" with the meaning given in AS 11.81.900(2). To make a determination of "knowingly" the committee relied on the following facts. The LFD is a financial disclosure and the name itself translates into disclosing a person's financial status which includes income, a major reporting component of the disclosure. The committee noted that Representative Herron was consistent in not including dollar amounts over the years and determined that he knowingly knew the income amounts were not included year after year. The committee noted that the LFD form clearly states "Total Income" or "Amount" in areas asking for income information. The committee concluded that the fact the amounts were missing would be obvious to someone required to complete a financial disclosure statement.

Representative Herron stated he had not compared his LFD disclosure statements to his tax records to ascertain that all relevant information was submitted. He did not bring his previous year tax records to Juneau to help in completing the LFD. The committee equated the annual filing of the LFD to APOC similar to filing the yearly tax return with the IRS. The forms must be complete and provide financial information.

AS 24.60.010(4) states, "The legislature finds that a part-time citizen legislature implies that legislators are expected and permitted to earn outside income and that the rules governing legislators' conduct during and after leaving public service must be clear, fair, and complete as possible; ..."

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."

When Representative Herron 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.

CORRECTIVE ACTION

The committee supports the Alaska Public Offices Commission's 2012 decision in which Representative Herron received a civil penalty of \$7,446 for incomplete Legislative Financial Disclosures for the calendar years 2009, 2010, and 2011. Representative Herron paid the fine.

The committee suspends any fine that could have been imposed under AS 24.60.178 taking into consideration the fact Representative Herron was already fined \$7,446 by the Alaska Public Offices Commission. No further action will be taken by the committee regarding this matter.

The committee suggests that Representative Herron bring his previous year tax records with him to Juneau to make sure information is not missing or incomplete on future Legislative Financial Disclosure statements.

SUPPLEMENTAL COMPLAINT INFORMATION

Under AS 24.60.170(g) Representative Herron must either comply with Complaint Decision H 12-06 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 recommendation. 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 House Subcommittee



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Gary J. Turner, Chair

Members Participating

Gary J. Turner, Chair

Dennis "Skip" Cook

Janie Leask

H. Conner Thomas

Representative Craig Johnson (alternate member)

Representative Chris Tuck