

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 07-06

DETERMINATION OF PROBABLE CAUSE AND OPINION RECOMMENDING CORRECTIVE ACTION UNDER AS 24.60.170(G)

The House Subcommittee received a properly filed complaint against former Representative Bruce Weyhrauch dated June 11, 2007. The complaint was amended on October 17, 2011.

The complaint alleged the following:

Allegation 1: Did former Representative Weyhrauch violate AS 24.60.030(a)(1)?

A legislator or legislative employee may not solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties;

Allegation 2: Did former Representative Weyhrauch violate AS 24.60.030(e)(1)?

A legislator may not directly, or by authorizing another to act on the legislator's behalf, agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, or donate or not donate to a cause favored by the legislator, or provide a thing of value;

Allegation 3: Did former Representative Weyhrauch violate AS 24.60.030(e)(3)?

A legislator may not directly, or by authorizing another to act on the legislator's behalf, unless required by the Uniform Rules of the Alaska State Legislature, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of another person with whom the legislator is negotiating for employment.

in that former Representative Bruce Weyhrauch attempted to receive money and other things of value in exchange for agreeing to perform, attempting to perform, and actually performing official acts as a member of the Alaska State Legislature. Former Representative Weyhrauch solicited future contractual work from VECO in return for performing official acts for VECO. Official acts included: voting in favor of versions of the PPT bill supported by VECO, Mr. Bill Allen, VECO chief executive officer, Mr. Rick Smith, VECO vice president, and the oil producers; lobbying other elected officials to support versions of PPT that VECO, Mr. Allen, Mr. Smith and the oil producers favored; and offering to assist and help VECO, Mr. Allen and Mr. Smith by providing official support for the natural gas pipeline legislation and the PPT bill.

SCOPE OF INVESTIGATION

The House Subcommittee finds that former Representative Weyhrauch and his attorneys cooperated in the investigation and provided documents when requested, if not under seal by the U.S. attorney's office. Former Representative Weyhrauch, through his attorneys, addressed the allegations against him before the subcommittee on June 14, 2012.

The House Subcommittee met on the following dates: June 11, 2007, September 28, 2007, July 12, 2011, September 27, 2011, October 17, 2011, June 14, 2012, January 23, 2014, May 29, 2014, October 28, 2014, and January 26, 2016.

The subcommittee referenced the AS 24.60 definition of benefit, thing of value, and legislative action; and person as defined in AS 01.10.

AS 24.60.990(a)(2)

*"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;** "anything of value," "benefit," or "thing of value"*

AS 24.60.990(a)(9)

"legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

AS 01.10.060(8)

"person" as including a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a **natural person**.

The terms public duties, official action, solicit, agree to, imply, negotiate, influence and employment are not defined in AS 24.60 or in previous complaint decisions or advisory opinions. The subcommittee referenced Black's Law Dictionary, Seventh Edition, 1999, in evaluating the statutes and allegations contained in the complaint.

The subcommittee determined the performance of "**public duties**" and "**official action**" relate to activities described in the definition of "legislative action" in AS 24.60.990(a)(9).

"**Employment**" is not defined in the Legislative Ethics Act, and there is no applicable definition in other Alaska statutes. For purposes of compliance with the Legislative Ethics Act, contractual employment is the same as employment as noted in the 2006 Standards of Conduct Handbook. A legal opinion from the committee's outside legal counsel on July 13, 2001, stated, "Employment is a "thing of value" within the meaning of the statute." AS 24.60.990(a)(9) uses the terms "thing of value" and "benefit" interchangeably. Therefore, the committee determined "employment" is a "benefit" as referenced in AS 24.60.030(a)(1) and a "thing of value" as referenced in AS 24.60.030(e)(1).

"**Solicit**" is the act or an instance of seeking to obtain something; an attempt or effort to gain business.

"**Agree to**" is not defined in Black's. The subcommittee looked at the term "agreement" as similar to "agree to." "Agreement" is a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons.

"**Imply**" means to express or involve indirectly.

"**Negotiate**" means to communicate with another party for the purpose of reaching an understanding; to bring about by discussion or bargaining.

“**Influence**” means the capacity to have an effect on the character, development, or behavior of someone or something; the capacity or power of persons or things to be a compelling force on or produce effects on the actions, behavior, opinions, etc., of others.

Investigative Material

Investigative material was requested and/or obtained, some via subpoena, from the FBI, U.S. District Attorney in Alaska, State of Alaska Attorney General, Weyhrauch’s attorneys, Legislative Affairs Agency Legal department, Alaska House Records, Alaska BASIS system, State of Alaska 9th Circuit Court, U.S. Supreme Court, Alaska Public Offices Commission, Alaska Select Committee on Legislative Ethics, and outside legal counsel for the Select Committee on Legislative Ethics.

The following documents were reviewed:

- Federal Indictment filed on May 3, 2007.
- Subsequent federal filings.
- U.S. v. Weyhrauch
 - 548 F.3d 1237 (9th Cir. 2008).
 - 544 F.3d 969 (9th Cir. 2008).
 - 623 F.3d 707 (9th Cir. 2010).
- Weyhrauch v. U.S. 130 S.Ct. 2971 (2010).
- Skilling v. U.S. 130 S.Ct. 2896 (2010).
- Plea Agreement filed March 11, 2011.
- Internal documents from the State of Alaska Attorney General regarding Weyhrauch’s plea agreement.
- Applicable Alaska statutes from 2006, previous complaint decisions including H 01-01, and advisory opinions including AO 04-02, AO 07-01, and AO 08-02, and legal opinions prepared for the Ethics Committee by outside legal counsel.
- Campaign donation and expenditure reports on file with APOC for the applicable period.
- Numerous letters from 2007 to 2014 from Weyhrauch’s attorneys along with accompanying documents and responses to further clarification requested by the House Committee. Some of the documents include:
 - Applicable legislative and Weyhrauch law office email correspondence to and from Weyhrauch.
 - Applicable correspondence sent by Weyhrauch on official legislative stationery.
 - Applicable correspondence sent by Weyhrauch on his law office stationary including letters seeking employment.
 - Some trial documents prepared by Weyhrauch’s attorneys.
- Requests made by Weyhrauch to LAA Legal to prepare amendments to PPT oil tax legislation.
- Amendments prepared by LAA Legal based on Weyhrauch’s requests.

- Official House Journal for the applicable period regarding PPT oil tax legislation.
- Video of certain House floor sessions for the applicable period regarding PPT oil tax legislation.
- Recap of House floor sessions relating to PPT oil tax legislation/amendments and Weyhrauch's vote on each and the House vote on the issue.
- 2006 Standards of Conduct Handbook prepared by the Select Committee on Legislative Ethics for legislators and legislative staff.
- ADVISOR newsletters sent to all legislators and legislative staff, including the May 2004 edition.
- Various other applicable materials.

DETERMINATION OF PROBABLE CAUSE

The House Subcommittee on January 26, 2016, determined former Representative Weyhrauch violated the Legislative Ethics Act, AS 24.60.

Allegation 1 Former Representative Weyhrauch solicited a benefit other than official compensation – *promise of future employment by VECO* – for the performance of public duties – *development, drafting, consideration, sponsorship, and voting on PPT oil tax legislation favorable to VECO* – in violation of AS 24.60.030(a)(1).

Note: This statute places the terms “solicit,” “agree to accept” and “accept” in an “or” syntax; therefore, all three conditions are not required in order for a violation to be found.

Allegation 2 Former Representative Weyhrauch agreed to, stated, and implied that he would take official action – *development, drafting, consideration, and sponsorship of PPT oil tax legislation favorable to VECO* – including support or opposition to a bill – *voting on PPT oil tax legislation favorable to VECO* – as a result of a person's decision – *VECO* – to provide a thing of value – *promise of future employment by VECO* – in violation of AS 24.60.030(e)(1).

Note: The fact former Representative Weyhrauch did not ultimately receive a contract for employment from VECO is not a required element to find a violation of AS 24.60.030(e)(1). “Provide” includes “an offer.”

Allegation 3 Former Representative Weyhrauch took legislative action – *development, drafting, consideration, sponsorship, and voting on PPT oil tax legislation favorable to VECO* – and exerted official influence – *encouraged other legislators to vote similarly on PPT oil tax legislation* – that could substantially benefit or harm the financial interest of a person – *VECO* – with whom he was negotiating – *communication with Mr. Smith and Mr. Allen for the purpose of reaching an understanding* – for employment in violation of AS 24.60.030(e)(3).

Former Representative Weyhrauch's actions during the 2nd regular legislative session, 2nd special legislative session, and 3rd special legislative session are recapped below and very telling. They clearly show that former Representative Weyhrauch was voting on PPT oil

tax rate legislation and taking other official action favorable to VECO. Conversations and correspondence indicate that former Representative Weyhrauch was aware of Allen and Smith's offer of future contractual legal work with VECO.

2 nd Regular Legislative Session	January 9, 2006 through May 9, 2006
2 nd Special Legislative Session	May 10, 2006 through June 8, 2006
3 rd Special Legislative Session	July 12, 2006 through August 10, 2006

Debate on House Floor and Voting on PPT oil tax rate

- May 7 and 8, 2006
- June 4, 6, and 8, 2006
- August 4, 2006 (House Finance Committee)
- August 5, 6, and 10, 2006

May 4, 2006 Weyhrauch solicited future employment from VECO in his letter to Mr. Bill Allen, VECO chief operating officer, *"I have long admired the role that VECO has played in our State's resources and economic development. ...Thanks for everything you and the VECO teams has done for me. I look forward to assisting you professionally if that is possible. Please call me at your convenience. My resume is enclosed."*

On or about May 4, 2006 Mr. Allen and Mr. Rick Smith, VECO vice president, discussed with a lobbyist the fact that Weyhrauch had solicited VECO for legal work but that the matter should not be discussed outside Suite 604 of the Baranof. The indictment also stated that during a conversation in Suite 604 both Mr. Allen and Mr. Smith believed Weyhrauch's solicitation was connected to whether or not Weyhrauch would support VECO's preferred version of the PPT tax bill. (May 3, 2007 Federal Indictment)

On or about May 5, 2006 During a conversation between another legislator and Mr. Smith, the legislator asked Mr. Smith "are we going to get Weyhrauch" and the legislator told Mr. Smith that Weyhrauch had told him that he had applied for a legal position with VECO. (May 3, 2007 Federal Indictment)

On or about May 5, 2006 After Weyhrauch called Mr. Allen and told him that state legislators needed to 'hold the line' on 20/20 PPT tax rate, Mr. Allen stated, "When session is over you need to come up and talk to me" – to which Weyhrauch replied, "I'll do that right away." (May 3, 2007 Federal Indictment)

May 7, 2006 Weyhrauch mistakenly voted the wrong way on Amendment 20 to the PPT oil tax bill increasing the tax rate from 20% to 21.5%. After a recess, Amendment 20 was rescinded with Weyhrauch voting 'yea.' Amendment to Amendment 20 increased the tax rate from 20% to 22.6%. He voted 'nay.' Another amendment to Amendment 20 increased the tax rate from 20% to 21.5%. He voted 'nay.'

May 8, 2006 Weyhrauch participated in a telephone conversation with Smith where oil tax legislation was discussed. Later that day, Weyhrauch participated in a telephone conversation with Allen where oil tax legislation and the gas pipeline was discussed.

Weyhrauch told Allen that he thought a 21% tax was a “political reality.” He told Allen he would follow another legislator and cast his vote alongside that legislator’s vote. (May 3, 2007 Federal Indictment)

Weyhrauch submitted an amendment to an amendment offered by two other legislators limiting tax credits at 4% of the gross value point of production that he believed would benefit small producers. After talking to industry representatives, Governor’s staff, Republican caucus members, and House Finance, he moved to rescind the amendment.

May 9, 2006 SMITH: “Bruce Weyhrauch? Oh, he’s OK.” ALLEN: “We’re going to have to have – if we get this all done – I’m going to get him a contract or something.” SMITH: “We’ll figure something out.” (Trial tape for another legislator indicted on federal charges during this same time period.)

Allen, in a conversation in Suite 604 of the Baranof, told Smith that they would have to give Weyhrauch some contract legal work if the 20 percent PPT bill passed. (May 3, 2007 Federal Indictment)

May 19, 2006 Weyhrauch forwarded to his law office email, May 16 “Git R Dun” email sent to all legislators from Allen. Weyhrauch called Allen to schedule a meeting. Weyhrauch then sent an email via his law office email address to Mr. Allen stating, “I will be arriving in Anchorage on Wednesday May 24 and would like to meet with you at 4 p.m. to discuss a mutually beneficial relationship.” Weyhrauch followed up with a call to VECO to set up a meeting with Mr. Allen in Anchorage.

May 24, 2006 In preparing for the meeting that afternoon with Weyhrauch, Allen and Smith agreed that they needed Weyhrauch’s vote on the PPT legislation, and decided to “string Weyhrauch out for a while” and “stall a little bit” before providing Weyhrauch with legal contract work from VECO. (May 3, 2007 Federal Indictment)

May 25, 2006 Smith told a lobbyist for one of the oil producers that Allen had met with Weyhrauch the evening before; that their relationship with Weyhrauch was “going well”; that VECO was keeping Weyhrauch in a good place; and that “Bruce will be good.” (May 3, 2007 Federal Indictment)

May 30, 2006 Weyhrauch sent correspondence to Mr. Allen on legislative letterhead stating, “Bill, It was great to finally spend some time with you and Rick last week. Call anytime. I look forward to working with you and VECO in the future. Bruce”

June 4, 2006 Weyhrauch moved to adjourn ‘sine die’ after House Floor Amendment 1 increases PPT oil tax rate to 23.5%. The motion failed.

June 5, 2006 Weyhrauch called Smith advising PPT legislation going poorly and that it was “real frustrating” given what he had done to try to further VECO’s interests concerning the PPT bill. (May 3, 2007 Federal Indictment)

In a telephone conversation between a state senator and Allen concerning the PPT bill, they agreed that Weyhrauch came to support the version of the PPT bill favored by VECO because Allen told him that VECO would give Weyhrauch some legal work. (May 3, 2007 Federal Indictment)

June 19, 2006 Weyhrauch called Smith to give him an update on the PPT legislation. He advised that he was coming to Anchorage on state business and would “shoe-horn” himself into a meeting with other House Republican Representatives and let Allen know what was going on with ideas for a new PPT tax bill.

July 22, 2006 During a telephone conversation between Smith and another legislator, they acknowledged that both had spoken to Weyhrauch about the new PPT proposal. (May 3, 2007 Federal Indictment)

August 22, 2006 Weyhrauch called Smith advising him that it looked bad for the gas pipeline given the final vote in the House.

August 23, 2006 Weyhrauch, in a letter to Allen that was prepared on Alaska State Legislature letterhead, stated in part, “I mentioned to Smith that if you and he are available to get together to discuss pipeline or any other development issues, I would be pleased to accommodate your schedules.”

August 24, 2006 Weyhrauch sent a letter on his law office stationery to an out of state Attorney working for VECO and offered the use of his law office when the attorney was in town. “Apparently within the next two months, Alaska Governor Frank Murkowski plans to call yet another special session that will include matters related to a gas pipeline. If you are in town and need a place to conference, or any other office logistical support while you are here working for VECO, you are welcome to use our humble office facilities. Let me know.”

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The committee notes that former Representative Weyhrauch’s votes on the PPT oil tax rate were consistent in that he voted “no” for increases in the tax rate. When the tax rate had been increased and an amendment was introduced to reduce the tax rate, he voted in favor of the reduction. On June 6th the House floor voted for a 23.5% tax rate. Former Representative Weyhrauch voted no. When the House floor voted to adopt the conference committee recommendation on June 8th, former Representative Weyhrauch was absent/excused for the vote. During the third special session the House Finance committee moved out of committee a tax rate of 22.5%. Former Representative Weyhrauch voted ‘do pass.’ He consistently voted on August 10th during the House floor session for the 22.5% tax rate.

Former Representative Weyhrauch asked the Legislative Affairs Agency Legal Division to prepare 51 amendments relating to PPT oil tax legislation between March 29, 2006 and May 8, 2006.

During the period 2003 through 2005, former Representative Weyhrauch wrote 159 letters on his law office stationery soliciting clients and employment. In 2006, he wrote six letters soliciting employment; one was for a position in Washington DC, one in Switzerland, one in Kodiak, one to VECO, one to BP Exploration on June 12, 2006, and one to ExxonMobil on June 13, 2006. Another letter was sent to an out-of-state attorney working for VECO offering the use of his Juneau office and other office logistical support when the attorney was in town.

RECOMMENDATIONS FOR CORRECTIVE ACTION

While the subcommittee found former Representative Bruce Weyhrauch in violation of AS 24.60.030(a)(1), AS 24.60.030(e)(1) and AS 24.60.030(e)(3), there was no evidence that he ultimately became employed by VECO.

The subcommittee recommends corrective action as allowed under AS 24.60.170(g) and AS 24.60.178. The subcommittee recommends former Representative Weyhrauch be fined the maximum fine of \$5,000 per violation for a total of \$15,000. The committee also recommends contract expenses related to the investigation and adjudication of the complaint in the amount of \$3,103.70 be assessed. The fine and other expenses total \$18,103.70 and are to be paid by February 16, 2017.

The subcommittee further recommends former Representative Weyhrauch write a public letter of apology. The letter must be concise, factual, and address the ethics violations and nothing more. The verbiage must stay on point and not debate whether he agrees with this finding. The letter must state that he accepts responsibility for using his official position as a legislator to take legislative action and exert his influence to obtain a favorable outcome on PPT oil tax rate legislation for VECO, an oil company whose financial benefit would be substantial, while soliciting employment from VECO during the same time frame.

The public letter of apology is to be sent to current sitting legislators and statewide media outlets within 30 days of issuance of this decision as well as to any other individuals who request a copy. The letter will become an addendum to this opinion recommending corrective action.

It is important to note that a conflict of interest under the Act does not prohibit legislators from earning outside income, or impair legislators' income-earning abilities or opportunities. It allows a person to be a citizen legislator, while at the same time preserving the "high moral and ethical standards among public servants in the legislative branch of government ... essential to assure the trust, respect, and confidence of the people of this state." AS 24.60.010(1). However, when a legislator has a conflict of interest in a matter, voting favorably on legislation that could substantially benefit the employer with whom the legislator is negotiating for employment is contrary to AS 24.60.010 generally, and improper under AS 24.60.010(2) specifically which states, "The legislature finds that a fair and open government requires that legislators ... 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.”

COMPLIANCE

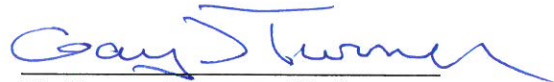
Former Representative Weyhrauch may either comply with the recommended corrective action or request a hearing pursuant to AS 24.60.170(g). The letter, stating an intention to comply or to request a public hearing, must be received in the Ethics Office by 5 p.m. on March 7, 2016.

Former Representative Weyhrauch also has the option to submit a written request to have a confidential meeting with the subcommittee, at which meeting the subcommittee shall explain the reasons for its recommendations under AS 24.60.170(g). The written request must be received in the Ethics Office by 5 p.m. on March 7, 2016. Under the Committee Rules of Procedure section 6(c)(4), the meeting may be in-person or by teleconference. When by teleconference, the request must include a waiver of the in-person requirement to permit the telephonic meeting.

The committee authorizes the chair to review the status of compliance by April 15, 2016, and report any non-compliance to committee members. If former Representative Weyhrauch fails to comply with this opinion, the committee may issue formal charges under AS 24.60.170(g) and AS 24.60.170(h).

Adopted this 26th day of January 2016
by a majority of the House Subcommittee

FOR


H. Conner Thomas, Chair

Members Participating

Representative Chris Tuck
Representative Liz Vazquez
Dennis “Skip” Cook
Gary J. Turner
H. Conner Thomas, Chair