

Alaska State Legislature

Select Committee on Legislative Ethics

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HOUSE SUBCOMMITTEE COMPLAINT H 12-07

DETERMINATION OF PROBABLE CAUSE

Allegation 4(a), 4(b)(2), 4(c), 4(d), and 4(g)

DISMISSAL ORDER

Allegation 4(b)(1), Allegation 4(e), and Allegation 4(f)

The House Subcommittee (committee) investigated multiple allegations contained in complaint H 12-07 and determined the following:

1. The House Subcommittee received a properly filed complaint against Representative Alan Dick dated December 12, 2012. The House Subcommittee amended the complaint on January 16, 2013, to include Allegation 4(g).
2. The complaint and amended complaint alleged the following:
 - ALLEGATION 4(a): That Representative Dick used his Fairbanks legislative office, equipment, and services for involvement in and support of partisan political activity and for his private benefit. Representative Dick and his wife resided at his Fairbanks legislative office for a period of at least 2-½ weeks for their private benefit and to conduct partisan political activities in violation of 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, for the private benefit of the legislator, ... or another person;

- ALLEGATION 4(b): That Representative Dick used and authorized the use of his Fairbanks legislative office, equipment, services, and staff for the purpose of campaign and fund raising activities in violation of 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 political fund raising or campaigning;

- ALLEGATION 4(c): That Representative Dick required his legislative staff to perform services – campaign and fund raising related activities – on government time for his private benefit in violation of AS 24.60.030(a)(4).

A legislator ... may not require a legislative employee to perform services for the private benefit of the legislator ... at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time;

- ALLEGATION 4(d): That Representative Dick required his legislative staff to assist with candidate activities, campaign activities and fund raising activities while on government time in violation of AS 24.60.030(b).

A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

- ALLEGATION 4(e): That Representative Dick used his Fairbanks legislative office as his campaign headquarters for a period of at least 2-½ weeks thereby displaying current campaign signs, campaign correspondence, campaign fliers, and other campaign materials in the office which could be viewed by constituents, other legislative staff, and members of the public in violation of AS 24.60.030(d).

A legislator, ..., or another person on behalf of the legislator ..., or a campaign committee of the legislator ..., may not distribute or post campaign literature, placards, posters, fund-raising notices, or other communications intended to influence the election of a candidate in an election in public areas in a facility ordinarily used to conduct state government business. This prohibition applies whether or not the election has been concluded. However, a legislator may post, in the legislator's private office, communications related to an election that has been concluded.

- ALLEGATION 4(f): That Representative Dick, while campaign door-knocking, threatened to take legislative action – an employment decision – with the underlying implication that his actions would be dependent upon a person or

person's decision to provide or not provide a political contribution or a thing of value in violation of 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, ... action, including support or opposition to ..., employment, ... as a result of a person's decision to provide or not provide a political contribution, ..., or provide or not provide a thing of value;

- ALLEGATION 4(g): That Representative Dick submitted expenses to the Legislature for attending the Alaska Federation of Natives annual convention – held October 17-19, 2012, in Anchorage – for reimbursement related to a matter of legislative concern and also received reimbursement for some of the same expenses from his campaign account for House District 38 in violation of AS 24.60.030(a)(3) and that Representative Dick's legislative travel was combined with campaign activities in violation of AS 24.60.030(a)(2) and AS 24.60.030(a)(5).

AS 24.60.030(a)(3) A legislator ... may not knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowance from public funds.

As 24.60.030(a)(2) A legislator ... may not use public funds, ... for involvement in or support of or opposition to partisan political activity, or for the private benefit of the legislator, ... ;

AS 24.60.030(a)(5) A legislator ... may not use or authorize the use of state funds, . . . for the purpose of political fund raising or campaigning;

SCOPE OF INVESTIGATION:

The House Subcommittee met on the following dates: December 12, 2012; January 16, 2013; February 26, 2013; and August 21, 2013.

On December 12, 2012, the committee adopted a Scope of Investigation focusing on Allegations 4(a) through 4(f). On January 16, 2013, the committee adopted an amended Scope of Investigation adding Allegation 4(g). Representative Dick was informed of the additional allegation via a telephone call on January 27 and also by letter sent to his email address on the same date.

On January 16, 2013, February 26, 2013, and August 21, 2013, the committee reviewed the investigative material. Representative Dick appeared before the committee on February 26, 2013, and August 21, 2013 to explain the allegations.

On August 21, 2013, the committee subdivided Allegation 4(b). Allegation 4(b)(1) focused on the storage of campaign signs and materials in Representative Dick's Fairbanks legislative office. Allegation 4(b)(2) focused on the use of government assets and resources, i.e., staff and equipment in Representative Dick's Fairbanks legislative office, for campaign activities.

The committee's investigation included:

- Seventeen interviews.
- Representative Dick's 2012 legislative travel expense reports and receipts on file with the Legislative Affairs Agency accounting office.
- Representative Dick's 2012 campaign financial reports on file with the Alaska Public Offices Commission.
- Representative Dick's 2012 applicable campaign receipts when supplied.
- Listing of House District 6 cities/villages and House District 38 cities/villages. (Note: Representative Dick was elected to House District 6 and ran as a candidate for House District 38. The change in legislative district boundaries occurs every ten years following the Federal census. The new legislative boundaries were effective for the 2012 elections.)
- Applicable personnel information relating to Representative Dick's staff.
- Review of internal inquiries received and correspondence relating to the subject matter of the complaint.
- Video footage for specific dates of the Fairbanks legislative office facilities on the 3rd floor of the Alaska USA Federal Credit Union.

DISMISSAL ORDER

On February 26, 2013, the committee dismissed Allegation 4(b)(1), Allegation 4(e), and Allegation 4(f) for the following reasons:

Allegation 4(b)(1). The House Subcommittee determined that there was insufficient tangible evidence to find that Representative Dick violated AS 24.60.030(a)(5) in that he used and authorized the use of his Fairbanks legislative offices for storing campaign signs and other campaign materials.

Allegation 4(e). The House Subcommittee determined that there was insufficient evidence to find that Representative Dick violated AS 24.60.030(d) in that he "distributed or posted" in his Fairbanks legislative office campaign signs, correspondence, fliers, and other campaign material in public areas in a facility ordinarily used to conduct state government business.

Allegation 4(f). The House Subcommittee determined there was insufficient evidence to find that Representative Dick violated AS 24.60.030(e)(1) in that he threatened to take legislative action – an employment decision – while campaigning in Ruby on October 1-

2, 2012, based on a person or person's decision to provide or not provide a contribution to his political campaign or provide or not provide a "thing of value" pursuant to the definition in AS 24.60.990(a)(2).

DETERMINATION OF PROBABLE CAUSE

Allegation 4(a): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(2), use of state resources for a nonlegislative purpose, involvement in or support of or opposition to partisan political activity, and for a private benefit of the legislator and another person, in that Representative Dick, his wife, and his son used his Fairbanks legislative office as a residence on and off for a period of approximately one month between mid-October 2012 and mid-November 2012. The period in question coincided with the 2012 General Election held on November 6, 2012.

The investigation revealed that Representative Dick had sleeping paraphernalia in his office for a period of time and was observed by building staff coming and going at all times of the day and night. His personal truck was seen "in the parking lot on numerous occasions overnight." Video footage provided by the Alaska USA Federal Credit Union contract maintenance company further affirmed that Representative Dick, his wife, and son stayed at his Fairbanks legislative office on at least one occasion.

Representative Dick admitted to the committee that he, his wife and sometimes his son resided at his Fairbanks legislative office from mid-October to mid-November 2012. He also stated in his recorded interview on January 17, 2012, "there's some nights in August when I ... slept on the couch."

The investigative material verified that Representative Dick campaigned for House District 38 up to and including General election day, November 6, 2012. The committee determined that it was realistic to conclude that Representative Dick performed campaign activities out of his legislative office in light of the fact the office was his home base for a period of several weeks prior to the general election.

The committee noted that AS 24.60.030(a)(2)(D) permits legislators to use their "private office *in the capital city during a legislative session* and for the ten days immediately before and the ten days immediately after a legislative session for *nonlegislative purposes* if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear or the legislator promptly reimburses the state for the cost." There is no such "nonlegislative purpose" exception in the Act for the use of a legislator's office during the interim.

Allegation 4(b)(2): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(2)(5), a legislator may not use or authorize the use of a government asset or resource for the purpose of campaigning, in that he required one of his legislative employees, a government asset, to prepare background material for a Fairbanks Chamber of Commerce candidate debate using legislative office equipment, a government

resource. The material was prepared the same day the debate was to take place. Representative Dick was an invited candidate panelist.

Representative Dick stated he was confused about whether the debate was related to his status as a legislator. However, the committee was resolute that a legislator would most definitely be able to distinguish between a chamber of commerce debate for the prime purpose of a “candidate” debate versus a forum whereby a legislator is on a panel discussing a current issue or pending legislation.

Allegation 4(c) and Allegation 4(d): The House Subcommittee finds that Representative Dick violated AS 24.60.030(b), a legislator may not “require” a legislative employee to perform services for the legislator’s private benefit on government time, and AS 24.60.030(a)(4), a legislator may not “require” a legislative employee to assist in political party or candidate activities, campaigning or fund raising activities on government time, in that Representative Dick not only required but demanded that one of his legislative employees, while on government time, prepare background material for the Fairbanks Chamber of Commerce candidate debate that was to take place that day in which Representative Dick was a candidate panelist.

Representative Dick admitted to the committee that he required his legislative staff to prepare the material for a chamber of commerce candidate debate on state time and with the use of state resources.

A review of the interviews and other investigative material affirms that Representative Dick was constantly reminded by staff in 2011 and 2012 that candidate, campaign, political party, and fund raising activities must not be performed in a state facility, with the use of government resources, or by staff on government time.

Allegation 4(g): The House Subcommittee finds that Representative Dick violated AS 24.60.030(a)(3), a legislator may not knowingly seek, accept, or use public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for reimbursement or travel allowance from public funds, and AS 24.60.030(a)(2), a legislator may not use public funds for involvement in or support of or opposition to partisan political activity or for the private benefit of a legislator, and AS 24.60.030(a)(5), a legislator may not use state funds for the purpose of political fund raising or campaigning, in that Representative Dick at the:

Denakkanaaga Elders Conference, June 6-10, 2012, held in Nikolai

- Received reimbursement from both the Legislature and District 38 campaign account for the following expenses.
 - Flew his own plane from Fairbanks to Nikolai to McGrath and back to Fairbanks – Legislature paid \$705.63 for aviation mileage and campaign account reimbursed \$473.40 for aviation gas.
 - One meal in McGrath – Legislature paid \$17.00 and campaign account reimbursed \$18.00.

- Received reimbursement from the Legislature for two nights lodging in McGrath, \$330, when he had a residence in McGrath. (Note: Rep Dick stated at the House Subcommittee on August 21, 2013, that he did not have a residence in McGrath. However, this statement contradicts the information he gave to the committee's investigator in a recorded interview on January 17, 2013, in which he stated, "... but I also have a residence in McGrath which was within the district.")

Signing SB 130, June 13-15, 2012, held in Anchorage

- Received reimbursement from both the Legislature and District 38 campaign account for the following expenses.
 - Drove his car from Fairbanks to Anchorage and back to Fairbanks – Legislature paid \$388.50 for mileage and campaign account reimbursed \$103.00 for gas (and groceries)..
 - One meal in Anchorage – Legislature paid \$18.00 and campaign account reimbursed \$11.75.

Aniak Courthouse Dedication, June 26-27, 2012, held in Aniak

- Received reimbursement from both the Legislature and District 38 campaign account for flying his own plane from Emmonak (located only in District 38) to Aniak and then to Sleetmute – Legislature paid \$351.08 for aviation mileage and campaign account reimbursed \$286.50 for aviation fuel.

Association of Village Council Presidents Annual Convention, October 2-6, 2012, held in Bethel

- Received reimbursement for renting a car in Anchorage for one day for a cost of \$84.10. Travel reimbursement claim submitted to the Legislature stated he drove his own car from Anchorage to Fairbanks and therefore did not need to rent a car.

Alaska Federation of Natives (AFN) Annual Convention, October 17-19, 2012, held in Anchorage

- Received identical reimbursement from the Legislature and District 38 campaign account for the following expenses.
 - Pen Air flight from Fairbanks to Anchorage - \$251.
 - Hotel accommodations in Anchorage - \$735.84.
- Received reimbursement from both the Legislature and District 38 campaign account for one meal. Legislature - \$51.00; campaign account - \$31.00.
- Upgraded the type of rental car allowed by the Legislature and did not pay for the upgrade - \$57.50.
- Received reimbursement for mileage from the Legislature for driving his own car from Anchorage to Fairbanks when he actually rented a car through the Legislature for the same trip – mileage reimbursement of \$194.25.
- Received reimbursement for rental car use on October 21 and 22, outside of authorized legislative travel - \$57.78. (Note: Additional lodging and three stops for gas were recorded on his campaign expense report for October 21 and 22 for a total of \$259.16.)

Tour of Kodiak Island School District and met with local educators, October 23-26, 2011, held in Kodiak

- Received reimbursement of \$258 from the Legislature in 2011 for lodging and one meal when these costs were paid for by the Kodiak School District.

RECAP of above expenditures and reimbursements.

<u>Date</u>	<u>Item</u>	<u>Campaign</u>	<u>LAA</u>	<u>Not Allowed</u>
June 6-10	Aviation gas/mileage	473.40	705.63	
	Meal	18.00	17.00	
	Lodging			330.00
June 13-15	Aviation gas/mileage	103.00	388.50	
	Meal	11.75	18.00	
June 26-27	Aviation gas/mileage	286.50	351.08	
Oct 2-6	Rental car			84.10
Oct 17-20	Airline	251.00	251.00	
	Lodging	735.84	735.84	
	Meal	31.00	51.00	
	Rental car upgrade			57.50
	Mileage			194.25
	Rental car, Oct 21-22			57.78
	Gas & Lodging, Oct 21-22	259.16		
Oct 23-26	Lodging & one meal			258.00
TOTALS		<u>2,169.65</u>	<u>2,518.05</u>	<u>981.63</u>

Legislators have a statutory, moral, and ethical responsibility to certify that travel expenses related to a trip taken for a matter of legislative concern are accurate and meet approved requirements. Representative Dick stated that staff completed all his travel reimbursement requests and even signed the form on his behalf. He indicated he was not involved with the paperwork or aware of what was submitted. Many trips had numerous changes to the initial itinerary and sometimes the event itself was cancelled due to weather or other extenuating factors of which were only known by Representative Dick.

Representative Dick admitted that he was overall remiss and negligent in providing staff oversight when travel reimbursement claims were processed and subsequently submitted to the Legislative Affairs Agency. He stated he would take responsibility for all errors on his travel claims.

The committee was adamant that a legislator be accountable for ensuring the accuracy of travel reimbursement requests even if staff completes and signs the travel reimbursement form. Further, the committee was informed by Representative Dick's campaign treasurer

that many of the receipts requested relating to applicable campaign expenses were not available as Representative Dick did not make a conscious effort to retain receipts.

Representative Dick's lack of attention to detail is unacceptable for a public official. A legislator's accountability to constituents and the public is paramount in maintaining public trust and confidence in government.

The committee noted that it was well documented that legislative travel paid for with legislative funds could not be combined with campaign activity while on that trip. Representative Dick was informed of this restriction at the in-person ethics training for new legislators conducted by the ethics administrator prior to the beginning of the 2011 legislative session. Several 2011-12 ethics newsletters also covered this subject. Additionally, the committee administrator has attested and documented that she had personal conversations with Representative Dick on multiple occasions regarding the myriad of restrictions on combining the use of government resources with activities relating to campaigns.

After reviewing numerous legislative travel reports and campaign expenditure reports, the committee concluded that Representative Dick seemed to operate under the premise that rules and regulations regarding legislative travel did not apply to him as he frequently combined legislative activities with campaign activities. The committee commented that it was highly probable other 2012 trips met these criteria but lacked the required documentation.

RECOMMENDATION AND CORRECTIVE ACTION:

The House Subcommittee finds that Representative Dick violated multiple sections of the Legislative Ethics Act, AS 24.60, as noted in the preceding pages. The residents of the State of Alaska have the right to expect that state resources will be used by legislators for activities related to performing their legislative duties and not for activities that provide a private benefit or for partisan political purposes such as campaigning or fundraising.

High moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state. AS 24.60.010(1). Representative Dick's misuse of public resources violated the trust, respect, and confidence of the residents of our great state. Representative Dick had a cavalier mindset when it came to conducting the public's business in a manner that preserved the integrity of the legislative process and avoided conflicts of interest or even appearances of conflicts of interest.

Corrective action recommended by the House Subcommittee includes requiring Representative Dick to pay the Legislature \$3,499.68 for reimbursement of improperly received benefits. AS 24.60.178(b)(5). The costs are broken down as follows: eight separate expenses totaling \$2,518.05 were reimbursed by the Legislature and likewise reimbursed via Representative Dick's campaign account; and seven separate expenses

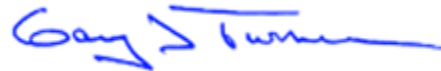
totaling \$981.63 were reimbursed by the Legislature when the expenses were either not allowed or authorized under the Legislative Affairs Agency travel guidelines and/or the House of Representatives travel guidelines.

The committee further recommends that Representative Dick pay all of the costs associated with the investigation and adjudication of the complaint. AS 24.60.178(c). The costs totaled \$14,495.35 and included: \$9,350.00 – investigator interviews; \$2,654.10 – other investigator costs, including travel expenses and per diem; \$2,373.75 – transcription services; \$52.50 – legal counsel; and \$65.00 – process server fee.

Representative Dick must reimburse the Legislature a total of \$17,995.03 for improperly received benefits plus the costs associated with the investigation of the complaint. The committee recommends reimbursements be completed by September 1, 2014. Payments should be made directly to the Legislative Affairs Agency accounting office. The committee chair will review the status of compliance on a monthly basis and provide updates to committee members.

Pursuant to AS 24.60.170(g), Representative Dick may comply with this opinion or request a hearing before the committee. Representative Dick admitted to the allegations outlined in 4(a), 4(b)(2), 4(c), 4(d), and 4(g) as noted in the preceding pages.

If Representative Dick fails to comply with the time table stipulated for corrective action as defined in this opinion, the committee may formally charge him as provided in AS 24.60.170(g) or may refer the matter to the House of Representatives. The House of Representatives may take action to enforce the corrective action or may decline to take action and refer the matter to the committee. In either case, the committee may formally charge Representative Dick under AS 24.60.170(h).



Adopted this 21st day of August 2013
by a majority of the House Subcommittee

Gary J. Turner, Chair

Members Participating

Gary J. Turner, Chair
Dennis “Skip” Cook
Antoinette “Toni” Mallott
H. Conner Thomas
Herman G. Walker, Jr.
Representative Craig Johnson (alternate member)
Representative Chris Tuck