

Hon. Carl Rosier, Commissioner
Department of Fish & Game

August 23, 1991

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465-3600

Designating official fish
and game advisory

committee

representative at board
meeting

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You have asked whether the Boards of Fisheries and Game may determine that only representatives from fish and game advisory committees whose expenses are paid by the state to attend to a board meeting may participate as the official representative of advisory committees at the board meeting. The answer to your question is yes, the boards may so decide, since the administration of the advisory committees is committed by statute to their discretion, and since the policy appears to continue a consistent effort by the boards to ensure the committee system is balanced.

The fish and game advisory committee are established by the board under the authority of AS 16.05.260:

The Board of Fisheries and the Board of Game may adopt regulations they consider advisable in accordance with the Administrative Procedure Act (AS 44.62) establishing, at places in the state designated by the individual boards, advisory committees to be composed of persons well informed on fish and game resources of the locality. The board shall set the number and terms of each of the members of the advisory committee, shall delegate one member of the committee as chairman, and shall give the chairman authority to hold public hearings on fish or game matters. Recommendations from the advisory committee shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee, the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendation.

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Pursuant to that authority, the Joint Boards of Fisheries and Game have in 5 AAC 96 established a system of fish and game advisory committees. The committees established are listed in 5 AAC 96.021, and are found in all six regions of the state -- southeast, southcentral, southwest, western, arctic, and interior.

The purpose of those committees is "to provide a local forum for the collection of opinions and recommendations on matters related to the management of fish and wildlife resources." 5 AAC 96.010. The committees' authorities include the ability to "develop regulatory proposals for submission to the appropriate board," and to "evaluate regulatory proposals submitted to them and to make recommendations to the appropriate board." 5 AAC 96.050. Thus, both the statute and the regulations contemplate transmission by the advisory committee of recommendations and suggestions to the boards.

To this end, the boards have provided that when "adequate funding exists," the committee members will be reimbursed for "travel and other necessary expenses approved in advance by the boards for committee chairmen or their designees to attend board meetings. A chairman's designee must be a committee member." 5 AAC 96.460. That attachment to your April 22, 1991, opinion request indicates that the board has determined that "in order to assure that all areas of the state . . . have equal and fair advantage in representation under the current budget constraints," any advisory committee members who attend a board meeting on their own private funding will "not be recognized by the board as making 'official' advisory committee reports." Such individuals' "testimony would be considered as being that of a private citizen," contrasted to testimony from the chairman or the chairman's designee whose transportation is funded by the state, which will be considered the "official" committee report. The significance of which reports are considered "official" may be the requirements in AS 16.05.260 and 5 AAC 96.610 for board responses to certain committee recommendations and proposals.

A review of the advisory committee regulations indicates that the board is consistently concerned about fair representation by the advisory committees, both in terms of geography and user group. For example, the boards have identified some committees as representing "more than one community," and have sometimes designated "one or more seats on [a] committee for a specific

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community." 5 AAC 96.021(b). Those committees that represent more than one community and have designated community seats are listed in 5 AAC 96.021(c). For example, the Upper Lynn Canal Committee consists of eight seats for representatives from Haines, two seats for representatives from Skagway, one seat for a representative from Klukwan, and four seats for which no designation is made.

Another example is found in 5 AAC 96.060(e), which governs membership on advisory committees. The regulation provides that the

members must be representative of fish and game user groups in the area served by the committee. To the extent possible, at least three user groups must be represented on each committee, and membership must include representatives from each town or village located in the area that the committee represents. To ensure full representation of an area, the joint board will, in its discretion, assign a seat on the committee to a specific user group or a specific community.

Another example of the boards' attempts to provide all areas and user groups with a more-or-less equal representation of their views is found in 5 AAC 96.420, which sets out the factors the joint board will evaluate in reviewing requests to create committees. Those factors include whether an existing committee "could be expanded to include members who represent the interests of the persons making the request," whether "representation of all user groups on existing committees in an area is adequate," whether residents of the area in question "are likely to participate actively on the proposed committee," and "whether the proposed committee would enhance participation in the decision-making process."

Thus, it seems consistent with this general concern for balanced representation of points of view before the board that the board would seek to equalize the voices of the various committees when they officially present recommendations. If the board did not so limit official representation, committees from the area where the board meeting was being held (usually Anchorage), or within driving distance of there, would have an advantage over committees from more remote areas, where the cost of having additional people

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attend the board meeting could be much higher. On the other hand, an important aspect of our conclusion that the board policy of limiting official representation is reasonable is that other committee members who attend the board meeting may testify as members of the public, and thus may put their views before the board directly.

One concern that might be voiced to the limitation of official representation is a fear that the official representative, be it the chairman, or the chairman's designee, may not accurately present the views of the committee. However, the boards have in regulation provided for removal of advisory committee members for cause. 5 AAC 96.060(n). Although misrepresentation of committee views is not included specifically in the examples of "cause" set out in the regulation, that list does not appear to be limiting.

It may be presumed that if an advisory committee chairman or the chairman's designee grossly misrepresented the views of a committee to the board, the member could be removed by the board, after appropriate due process. 1/ For that matter, 5 AAC 96.060(m) provides that committees may replace any officer, if certain procedures are followed. Thus, the advisory committee regulations appear to contain a number of checks for abuse of the role of official representative to board meetings.

One other potential problem with the boards' policy should be mentioned here. The boards have adopted a number of regulations governing the advisory system, and it could be argued that the policy on official representation should be included in those regulations. The Administrative Procedure Act defines "regulation" as not including a policy "which relates only to the internal management of a state agency." It is arguable that the boards' relationship with their advisory committees would fall into that exception. On the other hand, since so many of the rules governing the interaction of the boards and the committees and

1/ For a discussion of that due process, please see 1986 Inf. Op. Att'y Gen. (Jul. 17; 663-86-0567) and 1988 Inf. Op. Att'y Gen. (Feb. 5; 661-88-0269).

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governing the committees themselves have been placed in regulation, for consistency's sake it may be advisable to amend the regulations to include this policy.

You note that the boards' policy may be in conflict with the governor's policy of "reducing state expenditures and encouraging the private sector to carry a greater share of the burden." We note that if any advisory committee is willing to send their official representative at the official representative's expense, and that person waives state compensation that might otherwise be available under 5 AAC 96.460, that is certainly acceptable. If the boards' policy is phrased in terms of the official representative being the man or woman whose travel is paid for, perhaps it should simply be reworded to indicate that the official representative is the individual who is either the committee chairman or the committee chairman's designee.

In sum, the boards have the authority to administer the fish and game advisory committee system, as long as that is done fairly and consistently. Limiting official representation to a board meeting to one member of each advisory committee seems consistent with that discretion.

LIS:nml

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