

Pat Ryan
Chief of Staff
Office of the Governor

November 17, 1992

663-93-0202

465-3600

Disqualification from
office applicable to
former legislators

Barbara J. Blasco
Assistant Attorney General
Governmental Affairs Section - Juneau

You have inquired as to the scope of the constitutional disqualification from office applicable to former legislators.

Article II, section 5 of the Alaska Constitution provides in part:

During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased while he was a member.

This same prohibition is set forth in AS 24.05.040.

The purpose of the constitutional and statutory prohibition on dual office holding is "to remove improper motives from considerations of legislators in voting for increased salaries or the creation of new offices." *Warwick v. State ex rel. Chance*, 548 P.2d 384, 388 (Alaska 1976) (footnote omitted).

Because prohibitions like this are contrary to general public policy which favors eligibility of citizens to seek public office, they are usually given a strict construction and are rarely expanded beyond their express terms. *Id.* at 389. "Public service and concern for the welfare of the citizenry is essential if we are to have a viable state government." *Begich v. Jefferson*, 441 P.2d 27, 35 (Alaska 1968). Where there is doubt as to the coverage of such provisions, the courts have emphasized that when the office is elective, the preference for eligibility is stronger since the electorate will have the ability to judge the candidate's motives at the polls. *Warwick*, 548 P.2d at 390.

Pat Ryan, Chief of Staff
Office of the Governor
AGO file: 663-93-0202

November 17, 1992
Page 2

The court in *Warwick* described these policy considerations as follows:

[O]ur political system favors the participation of the citizenry in public affairs. Some courts have indicated that the continuation in public service by an experienced person is another important consideration.

For such reasons, many courts have adopted a literal construction of this type of constitutional provision, but few have expanded on the express wording. In upholding eligibility of an officer, courts have shown a preference for eligibility to elective offices over appointive positions.

Id. at 389 (footnotes omitted). See also 1977 Op. Att'y Gen. No. 42 (Nov. 16); 1976 Op. Att'y Gen. No. 26 (June 29).

Under the constitutional prohibition on dual office holding, a former legislator may not, for one year after the end of the legislator's term, be appointed to either a position that was created while the legislator was a member, or to a pre-existing position the salary for which was increased while he was a member. The constitution does not, however, prohibit the appointment of a former legislator to a position that was created after the legislator is no longer a member, but within one year of the end of the legislator's term. While we believe that a strict reading of the constitutional prohibition allows such an appointment, and that the constitutional provision should be strictly read, you should also bear in mind when considering this matter that "it is important that the legislature avoid not only impropriety, but also the appearance of impropriety." *Warwick*, 548 P.2d at 388.

Please let us know if you have further questions about this matter.

BJB:tg