

March 8, 1999

The Honorable Al Adams  
Alaska State Senate  
State Capitol, Room 417  
Juneau, Alaska 99801

Re: Senate Bill 33 -- Task Force on  
Privatization; Separation of Powers  
A.G. file no: 663-00-0084

Dear Senator Adams:

You have asked us to review a legal memorandum, dated March 3, 1999, prepared by legislative counsel Tamara Brandt Cook and advise as to whether we agree with her analysis concerning separation of powers and legislative committees created by law.

With respect to the general advice of Ms. Cook regarding legislative committees and task forces and how those are established under the Uniform Rules, we do not express an opinion.<sup>1</sup>

We believe that when a bill is used to establish a legislative commission or task force which is to include membership or appointments from the executive branch, the separation of powers doctrine becomes a serious consideration. Ms. Cook explains that when the organization of a legislative task force needs to have the force of law, a bill rather than a resolution is a more appropriate vehicle. Ms. Cook states it may be useful to use a bill to create a legislative organization “[i]f, for example, it is the desire of the legislature to have members appointed by someone outside the legislative branch, such as the governor, and there is a fear that the appointment may not be made.” This explanation as to why a bill, like SB 33, is necessary begs the question of separation of powers. A bill has the force of law. But, in SB 33, enforcement of the statutory mandate on the governor to make appointments to this legislative committee is unclear. The bill would make executive appointees responsible for carrying out law-making functions. This blurring of responsibility between the branches was not contemplated by the framers of the Alaska Constitution.

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<sup>1</sup> It should be noted that art. II, sec. 11 provides that interim committees may be established by the legislature. “By the legislature” or a variation of that term, is interchangeable with “by law.” Art. XII, sec. 11. *See* 1980 Inf. Op. Att’y Gen. (February 27; 663-80-0382)(a statute is required to establish an interim committee of the legislature).

The bill also mandates the type of representation of governor appointments on the proposed commission. This mandate is in effect a delegation of the governor's appointment powers granted under article III of the Alaska Constitution. Our constitution provides for a strong executive. A major feature of that arrangement in our constitution is the appointment authority of the governor under article III. *See* 1981 Inf. Op. Att'y Gen. (J-66-698-81, April 23).

Ms. Cook points out, and we concur, that the legislature may not constitutionally create in the legislative branch a committee or other organization that exercises executive branch powers, nor may legislators serve on the committee. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 141 (1976). We agree that the commission or task force to be created by SB 33, in its current form, is not required to exercise executive branch functions. In general, the committee is required to investigate and prepare a report that requires certain findings and recommendations to be included in that report, such as suggested legislation to accomplish the recommendations. But, we cannot opine with certainty that SB 33 does not violate the state constitution for the reasons discussed above. Finally, we do not believe our analysis of the constitutional infirmities noted herein changes simply because of the temporary or advisory nature of a task force or committee. The important consideration is who receives the advice, and will they act upon it.

Please be advised that this office and the administration do not oppose the purpose for which the task force under SB 33 is being created. In fact, the administration has expressed its support of the legislature's goals in creating this task force. Our legal concerns are not meant to discourage legislative and executive branch cooperation. However, notwithstanding the laudability of a particular legislative task force or committee, we believe it is important not to overlook historically relevant constitutional issues simply because the two branches of government may appear united as to the purpose for which a legislative task force or committee is created. To the extent that the governor complies with the provisions of the bill, this would not be a waiver of the right of a succeeding governor to object to a similar proposal for joint executive-legislative task forces and commissions.

We apologize for the brevity of this review, but due to time constraints a more detailed analysis is not possible at this time. Please do not hesitate to call if you have questions on this matter.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:  
Marjorie L. Vandor  
Assistant Attorney General

MLV:jn

cc: Tamara Brandt Cook  
Director, Legal Services

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