

# MEMORANDUM

## State of Alaska Department of Law

TO: Dan Bockhorst, Supervisor  
Local Boundary Commission Staff

DATE: July 28, 1999

William Walters, Commissioner  
Local Boundary Commission

FILE NO: 663-00-0085

TELEPHONE NO: (907) 465-3600

SUBJECT: Commissioner William  
Walters; Relocating to  
Third Judicial District  
(AS 44.47.565)

FROM: Marjorie L. Vandor  
Assistant Attorney General  
Governmental Affairs Section - Juneau

You have asked for our advice as to whether Commissioner William Walters may continue to serve on the Local Boundary Commission (LBC) until the expiration of his term although, prior to the end of his term, he will be moving out of the judicial district from which he was appointed (i.e., fourth judicial district) under AS 44.47.565. In brief, it is our advice that Commissioner Walters should resign his position before he leaves the fourth judicial district even though only a few months will remain of his term on the LBC. Our reasons follow.

### **I. Qualifications for Appointment Must be Met Through Term**

Alaska Statute 44.47.565 establishes the Local Boundary Commission and it reads:

**Sec. 44.47.565. Local boundary commission.** There is in the department a local boundary commission. The local boundary commission consists of five members appointed by the governor for overlapping five-year terms. One member *shall* be appointed from each of the four judicial districts described in AS 22.10.101 and one member shall be appointed from the state at large. The member appointed from the state at large is the chairman of the commission.

(Emphasis added.) It is a qualification of being appointed to the LBC that one member shall be appointed from each of the judicial districts in the state. In the case of Commissioner Walters, he was appointed from the fourth judicial district. Qualifications for holding public office are continuing; a public official must meet all the qualifications

during the entire term, or surrender the office. 1987 Inf. Op. Att'y Gen. (May 22; 661-87-0514) (*citing* 63A Am. Jur. 2d *Public Officers and Employees* sec. 42 (1984)).

Commissioner Walter's term on the LBC expires January 31, 2000. We understand that he expects to move out of the fourth judicial district and relocate to Anchorage in October 1999. Commissioner Walters has expressed his desire to continue to serve on the LBC until his term expires. Unfortunately, he will no longer be qualified to serve as a member of the LBC once he moves out of the fourth judicial district. This is still the case even though only a few months will be remaining in his term. The language of AS 44.47.565 provides no exceptions to the appointment qualifications nor does it allow for a Commissioner's qualifications to be waived under certain circumstances (i.e., if less than six months remaining in a term). Without authorizing language in the statute, we do not believe Commissioner Walters will be qualified to continue to serve on the LBC after he moves to Anchorage.

## II. Holding Over

As a general rule, in the absence of a constitution or statute providing otherwise, a public officer is entitled to hold his or her office until a successor is appointed and qualified. *See* 1983 Inf. Op. Att'y Gen (August 30; 366-584-83); 1979 Inf. Op. Att'y Gen. (July 24; J66-051-80). However, that general rule is one which applies only after expiration of a term.<sup>1</sup> It presumes that the public officer is, throughout his or her term, qualified to hold the office. Commissioner Walter's situation of changing the judicial district of which he is a resident will, unfortunately, disqualify him during his term and the general rule of "holding over" will not apply to him.

Therefore, even though Commissioner Walters would like to continue to serve out his term, we believe that on balance the legal authorities noted above suggest that Commissioner Walters should resign from the LBC before he moves out of the fourth judicial district so that a successor can be appointed by the governor.

Please do not hesitate to contact me if you have further questions on this matter.

MLV:jn

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<sup>1</sup> The term "holding over" implies that an office has a fixed term, and the incumbent is holding into the succeeding term. Officers so holding over are generally regarded as de facto officers. 67 C.J.S. *Officers* sec. 71 (1978). The provisions regarding holding over apply only after the original term of office has expired. *Id.*, sec. 72.

Dan Bockhorst, Supervisor  
William Walters, Commissioner  
A.G. file no: 663-00-0085

July 28, 1999  
Page 3

cc: Pat Poland, Director  
Division of Municipal and Regional Assistance -- DCED

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