

Alaska State Legislature

Select Committee on Legislative Ethics

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C O N F I D E N T I A L

SENATE SUBCOMMITTEE PRELIMINARY EXAMINATION DISMISSAL OF COMPLAINT S 22-01

The Senate Subcommittee hereby dismisses the Complaint against Senator Peter Micciche S 22-01.

On December 4, 2022, the legislative ethics office received a complaint against Senator Peter Micciche from Allen Michael Chambers attached and incorporated herein by reference. The complaint was designated as S 22-01. The committee has jurisdiction over the Subject of the Complaint, Senator Peter Micciche.

The complaint of December 4, 2022, does not allege that Senator Peter Micciche violated a specific section of the Legislative Ethics Act AS 24.60 but rather alleges that in 2018 Senator Micciche was wrong in “Blocking [an] Alaskan on official Senate page Facebook” and that “Senator Micciche blocked me without due cause on his Senate Facebook page.” The Complainant also provided screen shots that he alleges are “clearly showing a block.”

The Administrator completed a preliminary examination under AS 24.60.170(c) and Rule of Procedure Section 14(d). The Rule of Procedure Section provides:

(d) PRELIMINARY EXAMINATION OF COMPLAINT: Before the committee considers a complaint, staff will conduct a preliminary examination of the complaint to determine and make a recommendation to the committee as to whether, based on the information and evidence on hand:

- (1) the act(s) complained of is within the jurisdiction and time limitation of the committee under AS 24.60 and,*
- (2) advise the committee whether the allegations, if true, constitute a violation of AS 24.60 and a proceeding is warranted. AS 24.60.170(c) and,*
- (3) there is specific and credible information to indicate that an investigation is warranted.*

TIME LIMITATION:

The acts complained of in the complaint occurred within five years before the date that the complaint was filed with the committee.¹

ALLEGED VIOLATIONS:

The complaint does not allege specific statutes were violated.

The Senate Subcommittee reviewed statutory sections of the Legislative Ethics Act to see if the allegations would, if true, be a violation under any statutory section but did not identify any relevant sections.

Further, the Senate Subcommittee reviewed the Social Media Guidelines adopted by Legislative Council on September 29, 2011, which were in effect at the time of the alleged violation. The preliminary examination review of the guidelines did not provide meaningful input into the issues presented in this complaint or provide a basis for a violation under the Legislative Ethics Act AS 24.60.

DISMISSAL AND REMINDER:

The complaint appears to be in proper form. The committee has jurisdiction in this matter and the complaint was filed within the time limitations. The complaint, however, does not contain an allegation, at the time of the allegations, which if true, would amount to a violation under the Legislative Ethics Act, AS 24.60 or credible and specific information to warrant investigation. The staff recommendation is that the committee dismiss this complaint based on the information and evidence contained in the complaint under AS 24.60.170(c). The subject of the complaint has not waived confidentiality under provisions of AS 24.60.170(c) or (l). This decision may be distinguished from Complaint S 21-01 based upon the time frame in which the acts occurred.

The subject should be reminded of the current language of the Social Media Guidelines adopted by Legislative Council on September 30, 2022:

... Alaska legislators are not obligated or constitutionally required to maintain a social media account. If a legislator chooses to have an official account, there is no requirement that the public be able to interact with it.

If you disable the public's ability to post or comment on your Twitter, Facebook, Instagram, YouTube, or other similar social media platform, there is no public forum and no risk of violating someone's rights under the First Amendment.

4. If you choose to ignore the above guideline, then do not filter, delete, or hide any comments and do not block or ban any persons.

¹ AS 24.60.170(a) “[t]he committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within 5 years before the date that the complaint is filed with the committee.”

One person's understanding of what constitutes an exception to free speech, such as obscenity or libel, can differ substantially from another's. While in deleting a comment you might feel strongly that you are enforcing a content-neutral policy, issues of fact in a dispute could lead a court to view your justification for the deletion as a pretext for practicing viewpoint discrimination.

Because exceptions to free speech are open to interpretation and often misapplied, permitting unrestricted access to an account is currently the safest, lowest-risk approach to managing a social media platform that allows for public interaction.

5. Note that if despite the guidelines above you choose to establish a public forum on an official legislative social media account or use a personal account for legislative matters and you do not allow unrestricted access to the account, you personally assume all risk and responsibility for legal defense of that action.

Further, the subject should be reminded of AS 24.60.010(9), which became law effective May 25, 2019: Legislative findings and purpose. The legislature finds that

(9) a fair and open government requires that constituents have unencumbered access to legislators about issues important to the state under art. I, secs. 5 and 6, Constitution of the State of Alaska, which protect the right of a legislator and a constituent to meet and the right of a person to petition the government, and this chapter is not intended to restrict those rights.

Therefore, the Senate Subcommittee dismissed Complaint S 22-01 against Senator Peter Micciche.

Adopted this 19th day of January 2023
by a majority of the Senate Subcommittee.

_____/s/
Skip Cook, Chair

Members Participating

Joyce M. Anderson
Jerry McBeath
Dennis "Skip" Cook
H. Conner Thomas
Deb Fancher
Senator Gary Stevens
Senator Löki Tobin