

LEGAL SERVICES

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MEMORANDUM

February 18, 2025

SUBJECT: Governor's ability to remove State Commission for Human Rights members (HB 23; Work Order No. 34-LS0249\A)

TO: Representative Andy Josephson
Attn: Ken Alper

FROM: Allison L. Radford
Legislative Counsel 

You have asked if the legislature may limit the governor's ability to remove a commissioner of the State Commission for Human Rights (SCHR) to removal "for cause." You also asked how a statute that is silent regarding removal of a board or commission member would be interpreted.¹

The short answer is that the legislature may likely place a limit on removal of an SCHR member since it is likely that SCHR is a regulatory or quasi-judicial agency. Where statutes are silent, a board or commission member serves at the pleasure of the governor.

Legislative role in appointment and removal of governor's appointments

In general, the governor's appointees serve at the pleasure of the governor, even when subject to legislative confirmation.² However, the legislature may restrict the removal of members of certain boards or commissions under art. III, sec. 26, of the Alaska Constitution, which states in relevant part:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, *and may be removed as provided by law.* (Emphasis added).

¹ You also asked for a list of boards and commissions where the governor may remove members at will and a list of boards and commissions where the governor may only remove members for cause. Legislative Research Services will respond to that portion of your request separately.

² *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976). 63 Am.Jur.2d, Public Officers and Employees § 221.

Where no law provides a limit on the governor's authority in this regard, removal is at the pleasure of the governor. Members of boards and commissions that are not at the head of a principal department or regulatory or quasi-judicial agencies serve at the pleasure of the governor, and the legislature may not apply additional restrictions.³

Regulatory and quasi-judicial agencies

The SCHR is a commission placed within the office of the governor, not "at the head of a principal department." Thus, whether the legislature may restrict the governor's removal power by law depends on whether the SCHR is a regulatory or quasi-judicial agency.⁴

Generally, a "regulatory agency" is one that issues rules or regulations to govern the public, segments of the public, or the use or management of resources, and a quasi-judicial agency has the power to hold hearings and deprive a citizen of rights or property. Although SCHR's implementing statutes do not explicitly identify it as a regulatory or quasi-judicial agency, it has features of both. For example, AS 18.80.050 vests the SCHR with the authority to adopt "procedural and substantive" regulations

³ *Id.* at 7. "In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."

⁴ The meaning of a "regulatory or quasi-judicial agency" was discussed at the Constitutional Convention (convention). Art. III, sec. 26, was proposed by the Committee on the Executive Branch as Committee Proposal 10 (later amended and resubmitted as Committee Proposal 10a), at the Constitutional Convention. Alaska Constitutional Convention Proceedings, Part 6. Delegate V. Rivers, chairman of the executive branch committee, described a "regulatory board" as follows:

The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature.

To summarize the words of Delegate McLaughlin, when describing the difference between a "regulatory board" and a "quasi-judicial board", he suggested that a "quasi-judicial" agency is one that is empowered to issue orders depriving a citizen of rights or property.

ACCP, at p. 1102 - 03. The delegates also acknowledged that a "regulatory board" could also be a "quasi-judicial board." ACCP, at p. 2206. From the discussion, it appears that the framers believed that a "regulatory board" was a board that issued rules or regulations to govern the public, segments of the public (including professions or enterprises), or the use or management of resources of the state.

relating to discrimination and reasonable accommodation requirements.⁵ These regulations apply to and govern the conduct of the general public. Likewise, the SCHR is empowered to order relief for violations of anti-discrimination law, including requiring an employer to provide back pay and front pay,⁶ requiring the sale, lease, or rental of a housing accommodation,⁷ and ordering attorney fees,⁸ among other remedies. For these reasons, the SCHR likely qualifies as a regulatory or quasi-judicial agency and the legislature may likely place limitations on the governor's authority to remove a commissioner.

Please let me know if you have any questions, or if you would like me to draft a bill to place limits on the governor's ability to remove SCHR members.

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⁵ AS 18.80.050 provides in full:

(a) The commission shall adopt procedural and substantive regulations necessary to implement this chapter.

(b) The commission shall adopt regulations relating to discrimination because of physical and mental disability. The regulations must furnish guidance concerning the circumstances under which it is necessary to make a reasonable accommodation for a physically or mentally disabled person when providing employment, financing or credit, public accommodations, the sale or rental of real property, or other goods, services, facilities, advantages, or privileges under this chapter.

⁶ AS 18.80.130(a)(1).

⁷ AS 18.80.130(a)(2).

⁸ AS 18.80.130(e).