

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION CENTRAL OFFICE

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Ray Metcalfe
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Dear Mr. Metcalfe:

This is in response to your letter dated March 25, received on March 29, concerning this department's handling of allegations you have made against a state legislator. Your letter questions the actions of both the civil division and the criminal division of this department, as well as the Alaska Public Offices Commission. Your accusations about the civil division appeared to be the result of your mistaken perception of legal advice provided in connection with APOC complaints filed by you against the legislator, and your mistaken perception of the status of those APOC complaints. These matters were addressed in a separate letter sent to you last week by Assistant Attorney General Jan DeYoung.

Your letter also mentioned that you had submitted information to the criminal division, which you contend shows that the legislator committed certain crimes. This is much the same information submitted to APOC. Because the state has not launched a criminal investigation, your letter says that you "suspect" we have instructed state law enforcement officials to take a "hands-off" approach. Again, you are again mistaken.

At the outset, I want to assure you that no one outside this division has directed, influenced or even discussed our review of this matter. Neither I nor anyone in the criminal division have communicated with the Attorney General, the Governor's Office or any member of the Legislature, about this matter or the way it should be handled. The Attorney General did, however, direct that we reply in writing to your letter.

As you know, dealing with and responding to accusations, speculation, rumor and innuendo is often viewed as part and parcel of being a public official today. However, as a former elected public official yourself, I'm sure you would agree that it is not appropriate for the state troopers to begin a criminal investigation every time a press report, editorial, political commentator or "blog" on the internet alleges wrongdoing by a public official. Certainly the state should have more in the way of factual information before it engages the full weight of government investigative power, and diverts criminal investigators, to inquiring into the business dealings and motives of public officials and businesses.

Thus, in deciding whether to begin a criminal investigation, we believed it was appropriate to carefully review the information submitted to us. If the information provided, or which is readily available, does not present a reasonable factual basis to support the allegations and to believe that a criminal offense may have been committed, then in my opinion it is not appropriate to initiate a full criminal investigation. This is not to say that the person alleging criminal conduct must bring forward a fully investigated case, complete with authenticated documentary evidence or a “smoking gun,” proving that a crime has been committed. However, suspicions and beliefs are simply not an adequate basis for launching a state criminal investigation.

We must also review such matters in light of the Alaska Constitution’s broad immunity for legislators charged with conflict of interest or self-dealing. See Alaska Constitution, Article II, section 6; *State v. Dankworth*, 672 P.2d 148 (Alaska App. 1983) (affirming dismissal of indictment against state senator for criminal conflict of interest under Alaska’s “speech and debate” immunity clause). As the *Dankworth* court explained, “If the motives for a legislator’s legislative activities are suspect, the constitution requires that the remedy be public exposure; if the suspicions are sustained, the sanction is to be administered either at the ballot box or in the legislature itself.” *Id.* at 152.

With these principles in mind, we reviewed your allegations and the factual information supporting them. Your letter to the Attorney General alleges that the legislator committed “bribery,” “money laundering,” and what you described as “plans for delivery of ‘off the books’ payments.” Although bribery is certainly a state crime, the other matters may instead implicate federal law or questions of legislative ethics. However, we will assume for this analysis that the allegations, if true, would violate state criminal law.

The allegations you submitted to APOC and to the criminal division relate to payments to the legislator of consulting fees or other income from various entities with an interest in state legislative action, and the legislator’s role on a board that receives and distributes federal funds to organizations that may have a business relationship with him. In support of those allegations, your letter states that you have provided the criminal division with copies of the complaints you submitted to APOC, plus “corroborating evidence,” “sworn testimony,” and “affidavits . . . from a variety of people.”

In reviewing the information you provided to determine if there is a reasonable factual basis to support your allegations, three immediate observations can be made. First, I’m sure you can appreciate that the APOC complaints you filed are not evidence and therefore do not provide us with a factual basis for assessing your allegations. We have reviewed the APOC complaints to help us understand your allegations, but the complaints themselves do not help us know if the allegations are accurate.

Second, although your letter indicates that you provided "corroborating evidence," there is little in what you gave us that could be characterized that way. For example, the many newspaper articles and internet web pages that were included are not evidence. Although, those materials help explain your contentions, they do not provide a factual basis for starting a criminal investigation.

Third, although your letter says that you submitted affidavits from a variety of people, we found only a single affidavit. There were no other sworn statements, and we assume this one affidavit is also the "sworn testimony" that is mentioned in your letter. The person who wrote the affidavit expressed his suspicion and beliefs many times, but the only first-hand information he provided is that during a meeting in November 2004, attended by some 60 people, the executive director of an organization, which had anticipated receiving an appropriation for federal funds or a loan guarantee, expressed his opinion that contractual payments to the legislator would be kept "off [the organization's] books." There is also an indication in the affidavit that the referenced federal appropriation did not take place.

The affidavit also presents some second-hand information that the contractual payments to the state legislator were for the purpose of securing certain *congressional* action. This second-hand information is hearsay, and thus not admissible in court, but we will assume for this analysis that a witness with first-hand information would be available to testify. More fundamentally, however, the affidavit states that the legislator was to be paid to obtain *federal* legislative action, thus at least on the surface not implicating his *state* legislative responsibilities.

Based on the information provided to us, I conclude that there is not a reasonable factual basis to support the allegations. Therefore we have not requested the Alaska State Troopers or any other law enforcement agency to begin a criminal investigation.

I want to make it clear that my conclusion is based on the information reviewed at this point in time. We understand that some of your complaints are still pending review by APOC, and it is possible that additional information may be generated through that process or from other sources. If additional factual information comes to light that might cause us to reevaluate my conclusion, we will review such information at that time.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: 
Dean J. Guaneli
Chief Assistant Attorney General