

# LEGAL SERVICES

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## MEMORANDUM

April 15, 2009

**SUBJECT:** Appointment of three people to fill a vacancy in the state senate

**TO:** Senator Hollis French

**FROM:** Pam Finley   
Revisor of Statutes

You have asked about the legality of the governor's presenting three names to fill a vacancy in the state senate. The short answer is that the governor's presenting more than one name at a time to fill a vacancy in the state legislature does not comply with state law.

AS 15.40.320 requires the governor to appoint "a qualified person" to fill the vacancy. AS 15.40.330 describes the qualifications of "the" appointee. If an appointee is rejected, AS 15.40.350 requires the governor to appoint "another qualified person." None of these statutes authorize the governor to present a list of persons for legislators to select, and all of them use language implying that only one person would be appointed at a time.

However, it is not the use of the singular in the text of AS 15.40.320 -15.40.350 that is important.<sup>1</sup> The problem with the governor's presenting three names is that the process set out in AS 15.40.320 - 15.40.350 is one of appointment by the governor and confirmation by members of the same house and party as the predecessor in office.<sup>2</sup> If the three names are just suggestions, then the governor has not "appointed" anyone. If the governor claims to have "appointed" all three as a unit, then the appointment would violate the state constitution because our constitution authorizes only one senator per senate district. Constitution of the State of Alaska, art. II, sec. 1, and art. VI, sec. 2. Essentially, the governor is using a process whereby she submits a list of names, and the Senate Democrats choose the person, i.e., make the "appointment."<sup>3</sup> This is not the process established by AS 15.40.320 - 15.40.350.

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<sup>1</sup> In fact, in general in the Alaska Statutes, the singular number includes the plural. AS 01.10.050(b).

<sup>2</sup> Strictly speaking, the governor's "appointment" is a "nomination" because the person does not take office until confirmed. AS 15.40.340. However, the terms "appointment" and "nomination" are often used interchangeably.

<sup>3</sup>A similar process---appointment from a list---is provided for in some statutes, except that the appointment is made by a member of the executive branch. See AS 14.40 150(b).

The situation is further complicated by the fact that two of the three names (Mr. Grussendorf and Mr. Nelson) have already been appointed to fill this vacancy and those appointments have been rejected by the Senate Democrats. The appointment of Mr. Nelson---the most recent appointee---is clearly improper because AS 15.40.350 requires the governor to appoint "another" qualified person after one has been rejected, and Mr. Nelson is the same person, not "another." It is not as clear that the same applies to Mr. Grussendorf, but if AS 15.40.350 were interpreted in line with the clear intent that the governor appoint someone who has not already been rejected, a second appointment of Mr Grussendorf would also be improper.<sup>4</sup>

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AS 14.42.015(d), AS 15.10.180, AS 15.13.020(b), AS 23.15.550(a)(6), and AS 44.39.030.

<sup>4</sup> If the appointment of a rejected appointee were allowed, the governor could simply alternate appointments between two persons