

Carl Rosier, Commissioner
Department of Fish & Game

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Fish and game regional
council officerships

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I. INTRODUCTION

Your predecessor asked our office to review four questions on officerships of fish and game regional councils, focusing on whether nonmembers may be officers. As discussed in more detail below, the regulations covering this area of regional council operations are not straightforward. However, we are fairly confident that they do authorize an individual who is not a member of a regional council to be elected an officer of a council, based on the reference in the regulations to Robert's Rules of Order. It thus seems to follow that if an individual who is a member of a regional council by virtue of being an advisory committee chairman's designee is elected to an officership, and if the advisory committee chairman later changes his or her designee, or elects to attend him or herself, the designee may continue as the regional council officer, although no longer a member of the council. However, we would like to emphasize that the Joint Boards of Fisheries and Game are free to revise the relevant regulations to ensure that they clearly spell out the result the boards desire.

II. RELEVANT REGULATIONS

The Joint Boards of Fisheries and Game have established six regional fish and game councils in Alaska, to correspond with the six fish and game resource management regions created in 5 AAC 96.210. Each council consists "of the chairmen, or their designees, of the active committees established within the region.

Any committee member who is a member of a council must be a resident of the region." 5 AAC 96.220.

The committees referred to are the fish and game advisory committees, established at various locations throughout the state

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in 5 AAC 96.021. To be eligible for membership on one of the committees, an individual "must have knowledge of and experience with the fish and wildlife resources and their uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership." 5 AAC 96.040.

Thus, the regional councils are made up of the chairmen of the active advisory committees within the particular region, or the designees of the chairmen. The term "designee" is defined in 5 AAC 96.910(5) as "a committee or council member who has been designated by the chairman."

The uniform rules of operation for the committees are set out in 5 AAC 96.060, and some of them are adopted by reference as uniform rules of operation for regional councils. 5 AAC 96.260(a).

The operating rules for councils on responsibilities, membership, and meetings, in 5 AAC 96.260(b), (c), and (d), specifically supersede the corresponding operating rules for advisory committees, as noted in 5 AAC 96.260(a).

One of the advisory committee rules of operation that is adopted by reference for regional councils is 5 AAC 96.060(r), which provides that the latest edition of Robert's Rules of Order applies to committee (and, by reference, council) meetings. The latest edition specifies that, as a rule, officer positions may be filled by nonmembers of the relevant group:

In most societies it is usual to elect the officers from among the members; but, in all except secret societies, unless the bylaws or an established practice provide otherwise, it is possible for an organization to choose its officers from outside its membership. In many legislative bodies the presiding officer is not a member of the body. In certain instances in an ordinary society -- for example, if an adjourned meeting or a special meeting must deal with a problem that has intensely divided the organization -- it may be that such a meeting can accomplish more under the chairmanship of an invited nonmember who is skilled in presiding; and such an arrangement can be made with the approval of the assembly if the president and the vice-president(s) concur. A large society with complex financial affairs may wish to employ a professional as treasurer.

An office carries with it only the rights necessary for executing the duties of the office, and it does not deprive a member of the society of his rights as a member. If a person holds an office in a society of which he is not a member and the bylaws make that officer an ex-officio member of the board, the nonmember is thereby a fullfledged board member with all the accompanying rights; but this does not make him a member of the society.

Robert's Rules of Order Newly Revised • 46, at 438-39 (1990) (emphasis added). As described hereafter, the regulations governing advisory committees and regional councils do not further address the matter, except to clarify that a secretary of an advisory committee need not be a member of the committee.

Two committee provisions that are adopted by reference for the councils are 5 AAC 96.060(j) and (k), governing the chairmanship and vice-chairmanship of committees (and, by reference, councils). The rule specifies that the committee chairman, "or a designee, is also a member of the regional council." 5 AAC 96.060(j). That same rule provides that a chairman of a committee "must meet the qualifications set out in 5 AAC 96.040," set out earlier in this memorandum, but does not specify that the chairman must be a member of the advisory committee.

One of the operating rules for advisory committees not specifically adopted by reference for regional councils in 5 AAC 96.260(a) is 5 AAC 96.060(l), describing the position of committee secretary. That regulation specifies that the secretary "may be, but need not be, a member of the committee If the secretary is not a committee member, the secretary has no vote on committee business other than nominations for committee membership."

It is against this backdrop that the questions posed by your predecessor must be analyzed.

III. THE SPECIFIC QUESTIONS

A. The first inquiry about officerships and fish and game regional councils is whether an individual who is not a member

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of a regional council can be elected as chairman, vice-chairman, or secretary.

The answer to this question is not completely clear from the existing regulations, but it appears that nonmembers of the council can probably be properly elected to all three officerships.

None of the officerships are described in 5 AAC 96.260, which sets out the uniform rules of operation for regional councils; that regulation does incorporate by reference the uniform rules of operations for advisory committees on the chairman and vice-chairman positions, 5 AAC 96.060(j) and (k), but not the secretary's position, described in 5 AAC 96.060(l). Although the provision regarding the secretary does not apply to regional councils, it does contain one piece of evidence that perhaps the Joint Boards of Fisheries and Game intended the chairman and the vice-chairman of the committees (and, by reference, the councils) to be members of the respective bodies. The provisions regarding the secretary state that the secretary "may be, but need not be, a member." Since that statement is not contained in the description of the chairman or the vice-chairman positions, it could be implied that, because of the omission, those officers were intended to be members of the committee (or council).

However, nowhere do the regulations specify that result; the provision regarding the chairmanship of committees states that the individual in that position must meet the qualifications for membership set out in 5 AAC 96.040 -- sufficient experience, knowledge, and reputation -- but does not say that the individual must be a member, which would have been a fairly easy specification for the joint boards to make in the regulation. Further, Robert's Rules of Order states that unless it is provided otherwise an organization may choose its officers from outside the organization's membership. In light of that, and the failure of the joint boards to specify that the officers must be members, we believe that under the regional council regulations as now written it is probable that all three officerships may be filled by nonmembers of the council.

Our conclusion is strengthened by the joint boards' disinclination to modify the existing regional council regulations at a recent meeting, when the conclusion described herein was described to the board as a preliminary assessment. The boards at that time had the opportunity (under proper legal notice) to adjust the regulations. The joint board declined to modify the regulations, in the face of specific advice that as written, the

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regulations appear to allow nonmembers to hold the chairmanship of the council. This inaction by the part of the joint boards is some evidence is that this is indeed the result intended by the current regulations.

We hasten to note that if, on second thought, this result is not viewed as appropriate by the joint boards, the regulations could easily be modified to require membership as a prerequisite to officership for councils, committees, or both.

B. The second question posed on this general subject is whether an advisory committee designee to a regional council may be elected as an officer of the regional council.

Especially in light of the fact that it appears that a nonmember of the council may be elected as an officer, the answer to this question is also yes: an advisory committee chairman's designee sitting on a regional council may be elected to an officership of that council. The membership of regional councils is set out in 5 AAC 96.220, as described above, and includes either the chairmen, or their designees, of the active committees within the relevant region. Since a designee is a member of the council, and since the council may, under the regulations as currently worded, elect even a nonmember as an officer, there appears to be no reason the council may not elect a designee who is sitting as a member of the council.

C. The third question assumes that an advisory committee chairman's designee has been elected as an officer of a council, and asks (1) whether that designee can be replaced at the discretion of the advisory committee chair, and (2) what happens to the officership if that can occur.

Again, in light of the fact that it appears (under the regulations as currently written) nonmembers of the council may serve as officers, if a designee who is a member and an officer of the council is "undesigned" by his or her committee chairman, the individual's membership on the council would lapse (to be replaced either by the chairman, or a new designee), but the officership would continue.

If the joint boards amended these regulations so that nonmembers could not hold officership in the council, this question would be slightly more complicated to answer, unless the regulations were clarified on this point also. If officers of the

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regional council had to be members of the council, and if a designee who was a member and an officer of a council was "undesigned" by his or her committee chairman, the officership could either pass to the individual now filling the seat for that advisory committee, or could be considered vacant. If the regulations on this point were not modified, but an amendment required that only members of the council could be officers, then if a designee elected to an officership were "undesigned" by the advisory committee chairman, probably the most reasonable result under the existing regulations would be that the officership should be considered empty, and a new election should be held for that position. That is because it seems likely that, in voting for the officers originally, those casting their ballots were voting for the individuals nominated, rather than for a particular committee, to fill that officership position.

Again, we wish to emphasize that the Joint Boards of Fisheries and Game could clarify this situation in any way they chose by simply determining the desired result and amending the regulations accordingly.

D. The final question asked was, "If the opinion specifies that to be a regional council officer the person must be an advisory committee chairman, what is the officer status if that person is not reelected chairman of the advisory committee?"

Under the existing regulations, there is no basis for assuming that regional council officerships may only be filled by advisory committee chairmen. Rather, the membership of the regional council is composed of the "chairmen, or their designees," and there is nothing to indicate that the designees may not be elected to officerships. Further, as discussed above, it appears that under the current regulations officerships of councils can even be held by individuals who are not members of the council. However, if the regulations were modified to provide that only advisory committee chairmen could be regional council officers, and if the regulations did not specifically address the question posed, we assume that, when an individual chairmanship of an advisory committee ended, the individual could no longer hold the officership on the regional council and a new election would have to be held by the council.

IV. CONCLUSION

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In summary, it appears that the existing regional council regulations allow nonmembers of the council to occupy officership positions. Since that is the case, there does not appear to be any restriction on electing an advisory committee chairman's designee serving as a member of a council to a council officership, or on an individual continuing in the officership, even if "undesigned" by his or her advisory committee chairman (so that he or she no longer holds council membership).

As we have noted, all these results are based on an assessment of the regulations as they currently read. The joint boards, of course, have the prerogative of amending the regulations to clarify that the results described above are those intended by the board, or to identify a preferred result and amend the regulations to accomplish that result. If the boards or the department would like us to review any regulations that might be drafted to address these problems, we would be happy to assist.

LIS:nml

cc: Laird Jones, Director
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