

Harry Gamble
Public Information Office
Department of Education

June 23, 1993

663-93-0365

465-3603

State Board of Education/
Military Advisor

obtaining

a full voting membership

Thomas J. Slagle
Assistant Attorney General
Human Services Section-Juneau

We informally discussed this issue with the State Board of Education (Board) in the spring. This is a follow-up memorandum of advice specifically addressing the question of whether the military advisory member of the Board be given a voting membership.

A short answer is that a military advisory member could become a full member of the state board with voting powers, but it would require several statutory changes.

Background:

The current education statutes dealing with board membership do not specifically address military participation on the state board. AS 14.07.085(a) and (b) provide:

Appointment of Members. (a) The seven members of the board, no more than four of whom shall be members of the same political party as the governor, shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. In appointing board members, the governor shall consider recommendations made by recognized educational associations in the state.

(b) One member shall be appointed from each of the four judicial districts and three from the state at large with at least one member representing regional educational attendance areas.

By the terms of the Alaska Constitution, the governor appoints the members of the Board of Education. Article III, section 26, of the Alaska Constitution provides: "When a board or

commission is at the head of a principal department or a regulatory or quasi-judicial agency, its member 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."

Under AS 39.05.065, qualifications of members of the Board of Education require that "[e]ach member of the Board of Education shall be a citizen of the United States and have been a resident of Alaska for at least three years." Under a broader statute relating to qualifications for appointment to state boards, AS 39.05.100 requires, in part:

(a) A person appointed to a board or commission of the state government shall be and have been before the last general election, [(1)] a registered voter in the state, if the appointment is made at large or (2) a registered voter from the judicial district, if the appointment is made from a specific judicial district.

Currently, the procedure for participation of a military advisory member is outlined under regulations 4 AAC 03.025 and provides that the military representative is appointed by the Board of Education from three candidates nominated by the senior military commander in Alaska. The term will not exceed three years. The military advisory member may participate in board work and cast an advisory vote, but the advisory vote is not counted in determining the disposition of a matter. AS 14.07.070 allows the board to appoint advisory members. (The participation and voting criteria also applies to the student advisory member.)

Federal statutes restrict the appointment of an officer to civilian office. 10 U.S.C.S. • 973 (1986) provides, in part:

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

. . . .

(b)(3) Except as otherwise authorized by law an officer to whom this subsection applies may not

hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States

Thus, the military representative would necessarily be a non-commissioned officer, or a civilian employed by the military, not a regular officer.

Required Changes:

To allow a military representative to be a voting member, the board would require several changes to the above statutes and regulations. Under AS 14.07.085, a change would be necessary to specifically allow a military member. One member at large could be changed to a military representative, to keep the current seven-member board, or an additional member could be added to create an eight-member board.

To comply with the Alaska Constitutional provisions under article III, section 26, the military member must be appointed by the governor, rather than by the board as is currently done under regulations. Probably the senior military commander could still nominate candidates, although the governor would not be bound by the nominees provided.

AS 39.05.065 requires that a board member shall be a citizen of the United States and have been a resident of Alaska for at least three years. Military personnel frequently rotate in a relatively short period of time. A statutory change could allow an exception to the three-year residency for the military member.

Considering 10 U.S.C. • 973, the military representative would not be a regular officer and would be limited to enlisted officers or civilians working for the military. The current military advisory member is a civilian employed by the military. (See 54 Am. Jur. 2d Military, and Civil Defense • 154 (1971), dealing with the conflict between being an officer and accepting appointment to a civilian office at the same time.)

Finally, AS 39.05.100 requires that an appointee to a state board shall have been before the last general election a registered voter in the state. Frequently, military personnel maintain their home residency for voting purposes. Thus, a

Harry Gamble
Department of Education
663-93-0365

June 23, 1993
Page 4

statutory change could be considered to allow an exception for
the military member of the board.

TJS:wb