

Grand jury erred, private report says

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JUNEAU—A grand jury that recommended the Legislature remove Gov. Bill Sheffield from office may have exceeded its lawful authority, according to a private report by an Anchorage attorney.

Written by lawyer John McKay for Anchorage businessman Bob Uchitel, the five-page memo was distributed to members of the Senate last week by Sen. John Sackett, R-Ruby.

Sackett said he and Uchitel agreed to have the report researched, and to share in its costs, after Senate chief counsel Sam Dash refused to do the same work.

Uchitel could not be reached

for comment on the memo.

Sackett, one of two senators to vote against holding impeachment hearings, said he had asked Dash to research the authority of grand juries to issue special reports.

"I found myself asking why I was here, if I should be here," Sackett told members of the Senate Rules Committee, which is considering impeachment charges against the governor.

In its July 1 report, a Juneau grand jury said Sheffield is unfit for public office, and asked the Legislature to convene in special session, for the purpose of impeaching him.

The grand jurors said that full disclosure of the evidence against the governor—rather than formal legal charges—would allow the public to determine for itself if

Sheffield acted improperly in the award of a \$9.1 million state office building lease.

"The grand jury's authority to issue a report criticizing but not indicting the governor is questionable," said McKay's memo, dated July 20.

"It is a close question, but it appears the grand jury may well have exceeded its lawful authority. If the grand jury was wrong, the appropriate remedy would probably be a court order expunging the report from the public record," McKay's memo to Uchitel said.

McKay's memo said, though, that even if a court order were obtained, clearing the record of the grand jury's report, it might have no effect on the impeachment proceedings against the governor.

"Whether such an expunge-order would at least partially vindicate Sheffield in the court of public opinion is problematical," the report said. "It would be largely symbolic, but in political life especially, symbols are important."

In its 69-page report, the Juneau grand jury said the power of grand juries to investigate and issue public reports relating to the conduct of governmental business is spelled out in the Alaska

Constitution.

The grand jurors also quoted Chief Justice Vanderbilt of the New Jersey Supreme Court, who argued in a 1952 case that such reports, even in the absence of indictments, meet a public need.

"There are many official acts and omissions that fall short of criminal misconduct and yet are not in the public interest," Justice Vanderbilt wrote. "It is very much to the public advantage that such conduct be revealed in an effective, official way."

"No community desires to lie a hairbreadth above the criminal level... (grand jury) reports are a great deterrent to official wrongdoing... (and) inspire public confidence in the capacity of the body politic to purge itself of untoward conditions," Vanderbilt wrote.

But Sheffield's defense lawyers, John Conway and Philip Lacovara, said Vanderbilt's defense of grand jury reports was later knocked down by the New Jersey Supreme Court.

"In a subsequent New Jersey case, the very portion of Vanderbilt's ruling quoted by the grand jury was overruled," Conway said.

"In the absence of any criminality or criminal conduct, the court said, a grand jury

transcends its power when it disparages, abuses or reprobates a public official in its report," Conway said.

In testimony before the Senate Rules Committee Monday, Conway and Lacovara said they are considering seeking an order from an appeals court, expunging the grand jury report from the record.

Senate counsel Dash told Rules Committee members, however, that the question of whether the grand jury erred in issuing a report is irrelevant because, regardless of its source, the information in the case against the governor remains the same.

In his memo to Uchitel, lawyer McKay cites a statement from Alaska Constitutional Convention delegate Seaborn Buckalew, who in 1955 warned that giving grand juries the authority to issue reports could deprive citizens of their rights under law.

Buckalew is now a state Superior Court judge, in Anchorage.

"The grand jury might have under investigation the conduct of some particular public office, for example the governor, or any

(Continued on Page Twenty-Five)

Grand jury

(Continued from Page Two)

public official, the local tax collector," Buckalew told his fellow delegates to the Constitutional convention.

"They don't have enough evidence to return an indictment but this would give them the power to blast him good and hard, and I think it would lead to all kinds of trouble," Buckalew said.

"Under this (the constitutional provision allowing for grand jury reports) they could discredit him completely, and he would have no way of answering.

"He might be able to come back and get the report of the grand jury stricken from the records of the court, but the damage would then be done. I think it is extremely dangerous, because a citizen would not have any protection," Buckalew said.