



## Renkes' story didn't wash, Bundy says

**DELETED E-MAILS: Investigator says he couldn't prove a cover-up.**

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Anchorage Daily News

*(Published: February 2, 2005)*

Former U.S. Attorney Robert Bundy said Tuesday that he didn't believe Attorney General Gregg Renkes' explanation for why he deleted nearly two years' worth of e-mails on Oct. 1, the same day news broke that Renkes owned stock in a company he officially promoted.

Bundy, hired by the governor to investigate Renkes, said he couldn't conclude that Renkes destroyed thousands of e-mails to cover up his involvement in pushing a trade deal that could have boosted the stock price of KFx Inc., a Denver coal-drying company in which Renkes had more than \$100,000 invested.

But Bundy said he didn't find plausible Renkes' sworn statement that he purged his e-mail Oct. 1 because computer technicians had been hounding him for months to empty his electronic trash bin and that it was a coincidence that it happened on the same day the first story about KFx broke.

"I was not convinced that it was a coincidence," Bundy told reporters Tuesday at his Anchorage office. "I'd say there is a real question there."

A Department of Law spokesman said Tuesday that Renkes would have no comment.

Bundy, a former prosecutor of white-collar crime, said Renkes also told him under oath that he was unaware of the Oct. 1 Daily News story when he asked Drew McDougal, a Department of Law computer technician, that afternoon to help him delete a mountain of old e-mails. His electronic trash can contained thousands of official and personal messages that his computer had amassed since he became attorney general in December 2002.

Renkes spoke to the Daily News for the story on his KFx investments on Sept. 30.

Bundy investigated Renkes for four months, at an estimated cost to the state of about \$170,000, and concluded in a 64-page report released last week that the attorney general did not have a conflict of interest because his KFx investment was "insignificant." Bundy found that Renkes did violate the state Ethics Act by not ceasing his involvement in the coal negotiations until getting an ethics advisory opinion.

In a letter of reprimand Thursday, Gov. Frank Murkowski agreed with Bundy that Renkes exercised "poor judgment" in deleting the e-mails.

Bundy said that while he considered Renkes' explanation for the e-mail purge implausible, he did not see a convincing case of evidence tampering, a felony. A charge of evidence tampering could be brought only "if you're hiding evidence from a criminal prosecution," said Bundy, who was not acting as a criminal investigator with the authority to issue subpoenas or search warrants.

"Intent is key," said former chief state prosecutor Dan Hickey, now a private attorney in Anchorage. He said intent could be proved only if the accused told someone his plan or if sufficient evidence made it



Attorney Robert Bundy answered questions Tuesday about the Renkes report. Gov. Frank Murkowski hired Bundy to investigate conflict-of-interest allegations against Attorney General Gregg Renkes. (FRAN DURNER / Anchorage Daily News)

apparent.

Reporters asked Bundy whether the attorney general might have perjured himself if he lied about the e-mail deletion under oath. Bundy said yes, but that would also be difficult to prove.

"One of the things I've learned over 20 years of being a prosecutor is that things which seem clear on their face at one time suddenly become very difficult, particularly when people's state of mind is involved," Bundy said.

While Renkes' involvement in the KFx coal deal had been explored extensively in the media, news of his e-mail deletions surfaced only last week.

In his report, Bundy said the only problem that he encountered getting evidence was that he was unable to get some of Renkes' e-mails. He said this made his job more difficult but did not affect the outcome.

In his report, Bundy cited four reasons why he could not say Renkes deliberately tried to delete significant e-mails: He would have expected the backup system to catch them, many probably went to multiple recipients, the available e-mails "tell a fairly complete and consistent story" about the coal deal, and Renkes made no attempt to hide what he was doing when he involved a technician to help.

The same day as the e-mail purge, Renkes asked for an independent investigation into conflict-of-interest allegations against him.

As far as evidence tampering is concerned, the act is considered a crime if it interferes with a criminal investigation or an official proceeding. An open question in the Renkes case, Hickey said, was whether any proceeding was under way on Oct. 1, when the allegations surfaced. Bundy was not appointed until Oct. 3, and a formal ethics complaint to the state personnel board was not made until December. But the law also prohibits tampering when it is intended "to prevent the institution of a public proceeding."

It's possible the law could be read to prohibit tampering with evidence in anticipation of a possible investigation, Hickey said.

Organizing a criminal investigation of the state's top legal official is not something the state has experience in, Hickey said.

"It's never come up before," he said.

Hickey said that, in general, a criminal investigation of an attorney general could arise from within the Department of Law, either through the attorney general's office or a district attorney. Because those lawyers work for the attorney general, an outside prosecutor would probably be named. For some matters, state troopers in the Department of Public Safety might handle an investigation, he said.

The Renkes case, Hickey said, has not included an element showing that his actions were harmful to the state. Renkes has argued that his actions in the coal deal with Taiwan were all aimed at furthering Murkowski's resource-development agenda.

At the Department of Law, all media calls to state lawyers on the questions surrounding Renkes were being referred to department spokesman Mark Morones. He said he did not know how an independent counsel might be chosen to investigate an attorney general and declined to comment on whether anyone is examining Renkes' behavior with the e-mails.

"That's purely in the realm of speculation," he said. "To my knowledge, there's been no allegations of criminal wrongdoing."

Morones said Renkes had no further comment about the e-mail issue. He said the Bundy report speaks for itself.