

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### **MINUTES from February 17, 2010 FULL COMMITTEE MEETING State Capitol, Fahrenkamp Room # 203**

1. **CALL THE MEETING TO ORDER:** Chair H. Conner Thomas called the meeting to order at 3:10 p.m. Members present: Senator Gary Stevens, Senator John Coghill, Representative Carl Gatto, Representative Berta Gardner, Dennis (Skip) Cook, Ann Rabinowitz, Gary J. Turner, Herman G. Walker, Jr. Staff present: Joyce Anderson, Administrator, and Dan Wayne, LAA Legal Counsel.
2. **APPROVAL OF AGENDA:** Chair Thomas requested a motion to approve the agenda. Member Turner requested "legislative travel" be added to the agenda. Legislative travel will be discussed under Item 8. Other Business. Member Walker motioned to move and approve the amended agenda. No objections.
3. **APPROVAL OF MINUTES:** Member Cook made a motion to approve the minutes of November 19, 2009; Member Turner made a motion to approve the minutes of the Senate Subcommittee Meeting of November 19, 2009; Member Walker made a motion to approve the minutes of the House Subcommittee meeting of November 19, 2009; Member Turner made a motion to approve the minutes of the Senate Subcommittee Meeting of January 5, 2010. Minutes were approved; no objections.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
  - a. **Ethics disclosures:** Ms. Anderson stated that annual ethics disclosures were due today, February 17, 2010. Notices were sent to all staff and legislators. It was also announced on the Senate and House Floor on Monday. There is a 5 day grace period, if anyone misses the deadline.

There were five late disclosures since the last committee meeting: Sen Kevin Meyer, Jessie Kiehl, Alida Bus, Sen Davis, and Linda Day. This was their first late disclosure and no fines were imposed. All of the disclosures were “Gift” related disclosures. A notification letter was sent.

Senator Stevens commented that some reports require 60 days to file and some 30 days, which is very confusing for legislators. When the annual disclosure was announced on the Senate Floor, he noticed that it caught some people by surprise. Senator Stevens would like to see the deadline changed from 30 to 60 days. Senator Stevens questioned if there were any reason the deadline could not be changed. Ms. Anderson stated that there was no reason it could not be changed other than it would require a statutory change. Members commented on the topic.

- b. Ethics Training:** Ms. Anderson announced that the next ethics training session was tomorrow from 1-3pm and was a “make-up” training session. Training will be teleconferenced from three LIOs. Approximately 20-25 individuals are expected to attend. Any new individuals after the February 18<sup>th</sup> training will be instructed to take the online training. Members discussed how the online training was working out and Ms. Anderson stated that periodically there are occasional computer glitches but they have since been fixed. For example, some individuals were not receiving their confirmation e-mail of completion. She further explained that the training was split up into four segments with three questions at the end of each the segment. Members asked if we have received any feedback from any of the individuals who completed the training online. Ms. Anderson stated she would talk to her staff person who tracks the online training for feedback.
- c. Informal Advice Staff Report:** Ms. Anderson has not compiled a current staff report due to other job responsibilities taking precedence. Ms. Anderson referred members to a handout that contained background of advice that was questioned at the last committee meeting. The handout clarifies what advice was given to the question asked, “**May a legislator write a letter to a sentencing judge?**” It was determined that the letter was from a legislator who was also the Chair of a legislative committee and was written on committee letterhead. Ms. Anderson had consulted with the Vice Chair and the advice was that the Act did not have jurisdiction over actions with the judicial branch. At the last Committee meeting, it was determined the Committee *does* have jurisdiction of the actions of the legislator, which prompted the Committee to request additional information and clarification on this particular advice.

Ms. Anderson explained that the informal advice in her report was not stated in a clear manner. To recap: she was one of the recipients to receive the press release in question, via e-mail, and questioned its appropriateness. Previous advice given to a legislator writing a letter to a sentencing judge stated the legislator was not prohibited from writing the letter to a sentencing judge on legislative letterhead and with the use of the title, “Senator” or “Representative”, as long as the use did not imply denying or pro-offering state resources. The letter also cautioned the legislator about the public perception of such a letter and the appearance of possible conflict of interest or an appearance of impropriety, but ultimately left the decision up to the legislator. The letter in question was written on committee letterhead

but not on behalf of a legislative committee, but on behalf of Alaskans. The advice also included referencing advisory opinion 07-02, which addresses the use of legislative letterhead.

The following advice will be added to the September 12, 2009 through October 31, 2009 Staff Report: May a legislator write a letter to a sentencing judge: Determined the letter was from a legislator who is also the chair of a legislative committee and on committee letterhead. The letter was not on behalf of the legislative committee but on behalf of Alaskans. No previous advice on this subject is on file. AO 07-02 addressed the use of *legislative letterhead* for “character references, letters of recommendation, letters of congratulations, condolences, or any similar form of communication that is not a campaign communication.” The opinion does not differentiate between legislative letterhead of a specific legislator or other types of letterhead such as that used by a legislative committee chair. No action taken.

- d. **Outreach:** Ms. Anderson and Member Cook visited the Fairbanks LIO in December. The session was well attended by legislators and staff. Both felt it was beneficial. Timing of the meeting coincided with the already scheduled week-long meetings of area legislators and staff which covered discussions of various issues. Senator Coghill was present at the Outreach meeting and commented that there were a lot of questions from staff regarding campaign issues. Ms. Anderson noted she provided one-on-one training with Rep Tammie Wilson and staff, Rick Vanderkolk, on the same visit. Ms. Anderson also provided one-on-one training with Rep Foster and Sen Egan over the summer. As new legislators they were required to fulfill their ethics training requirement. An Outreach visit is planned for Kenai legislators during the coming interim. Nothing firm has been set at this time.
  - e. **Committee Member Appointments/Confirmations:** Chair Thomas announced three public members of the Ethics Committee were up for re-confirmation; Ann Rabinowitz, Gary Turner and himself. Ms. Rabinowitz is not seeking another term, however, she will continue to serve on the Committee until a replacement is appointed. Mr. Turner and the Chair have requested re-appointment to the Committee. Their names have been submitted by the Chief Justice to serve another three year term. Confirmation hearings were held earlier today by the House and Senate Judiciary Committees and their names were forwarded to the floor for a vote.
6. **LEGISLATION-UPDATE ON HB 193, LEGISLATIVE ETHICS:** Chair Thomas introduced Senator Coghill and asked him to provide an update on HB 193, Legislative Ethics, introduced in 2009. Senator Coghill stated Rep Lynn will take over as chairman and co-signer of the bill. Senator Coghill reviewed the W version with Rep Lynn’s staff, as well as the amendments. Senator Coghill briefly mentioned each topic in the Bill which includes disclosures, training for interns, civil penalty, definitions, conducting state business and campaign activities, speculating possible outcomes. Senator Coghill stated he is working with the co-chair of House Finance to schedule a hearing and discuss possible changes to bill language. He is sure one of the major debates will be on the reporting requirement change on the meal limit provided by a lobbyist from \$15 to \$50. The definitions section may be dropped as he has not been able to draw a clean line for the terms “constituent” and “legislative purpose.” He also feels the \$150 compensation per meeting recommended for public members may be a problem.

Sen Coghill and Sen Stevens are working together to formulate suggested language that would allow a legislator to pay a portion of a legislative business trip that was paid for with state funds

when campaign activity occurs on the same trip. This has been a major discussion within the committee and members of the Legislature.

Member Walker asked Sen Coghill if he thinks the Legislature wants the Committee to address these issues on a “case by case” basis and apply the law based on “rural” versus “urban” travel and other extenuating factors until a legislative fix is approved. Senator Coghill stated he thought the Legislature would expect the committee to apply the law as it is currently.

Representative Gatto provided background information on this subject. He remarked that several members of the House Judiciary Committee earlier this afternoon during the confirmation hearings commented on the vast distances covered by some legislators and that the current interpretation was not equitable to all legislators. Some legislative members of the House Judiciary Committee suggested the Ethics Committee should look at things, *“On a “case by case” basis, the committee made this decision about this question, for this legislator, at this time.”* And he stated the House Judiciary committee believed that the Ethics Committee should have that authority but the legal opinion focused on what the Legislature passed and how it should be enforced.

Senator Coghill responded that it’s been his experience to do what the law allows, suffer the consequences until the law can be changed or addressed. Senator Coghill stated he would be sticking with his statement. He sympathized with Rep Gatto and stated the law process is consensus building and many times, even with our best efforts, we end up with an ambiguous law.

Senator Stevens concurred stating that you have to comply with the law whether or not part of the law is questionable, and therefore, issues cannot be made on a case by case basis. We have to comply with the law and it’s up to us to change the law if it’s “excessive”.

- 7. RULES OF PROCEDURES - REVIEW OF Section 5, Executive Sessions; and Section 6, Teleconferences:** Chair Thomas explained this item is before the committee today at the request of Member Turner. He is interested in using teleconferencing and/or video conferencing when discussing matters required by law to be confidential. Currently our rules of procedure require an in-person meeting for confidential matters.

Ms. Anderson provided a handout of procedures that are followed by several other committees/agencies when conducting “executive sessions. They included: the Senate, the House, Legislative Council, the Alaska Public Offices Commission, and the Washington State Executive Board.

Legislative Affairs Agency Web Audio Specialists Jake Carpenter and Tim Powers joined the committee and discussed the available methods of teleconferencing and video conferencing. Mr. Carpenter stated that video conferencing was available to the Anchorage, Fairbanks and Juneau LIOs. The service is provided via a lease by GCI. The network management is also done through GCI. From a security stand-point, LAA does not have direct control. The only way to determine if a party is taking part in a video conference is to call GCI. Mr. Carpenter recently spoke to GCI about the security of video conferencing executive sessions, and GCI stated that they monitor most of the video conferences to insure they have quality video and audio. They

can be notified not to monitor, but it's not a hard lock-out; rather, it's a note in their system to not look at a meeting. There is availability of connecting without going through GCI as long as it is within the legislative network (Anchorage-Fairbanks-Juneau). Outside of the legislative network, GCI would have to make the connection, for example, in order to connect to the University of Alaska. Mr. Carpenter did not recollect ever using video conferencing for an executive session of the legislature. Neither does he recommend it because there can be no verifying who's watching or recording.

Mr. Powers stated LAA owns, maintains and operates the teleconferencing system. The bridging system is run in-house. LAA has a partnership with KTOO in providing streaming to the public for most legislative meetings. The red lights in a committee room (he pointed to the one in the Fahrenkamp Room) is a way of letting legislators know that the microphones are "hot" or in other words sound is going out to KTOO. Whenever the red light is on, there's a feed going to the television station, which cannot be separated out, with the exception of House Finance. With respect to security, in order to participate in a teleconference, a person must dial a local or 1-800 number and talk to a live bridge operator who controls putting people into meetings. The second way is a direct phone into the system that LAA moderators use at a LIO office. They call directly into the system and dial themselves into the specific meeting. This method wouldn't preclude a former employee from dialing that number and putting themselves in the meeting. There is no way of locking them out from joining in a meeting already in progress. Moderators can monitor a meeting and see who has joined a meeting and can disconnect them when they join in. But callers cannot be locked out later from joining a meeting, for instance, if a meeting did not start as an executive session and then went into executive session. There would be no way to assure someone wouldn't put themselves in the meeting. Mr. Powers recommended against using teleconferencing for executive sessions, unless using one of the House Finance rooms.

Mr. Turner expressed his disappointment in this finding as he had hoped the use of this technology would reduce travel time and travel expenses for the committee. Several members voiced their concern about the harm and consequences that could occur without complete security. Mr. Turner further noted he had hoped teleconferencing and/or video conferencing would aid in reducing the time it takes for the committee to "act" on issues. He further stated that the public will have to be understanding in the time it takes for the committee to "act" on issues due to the current technology that is available to them and the critical nature of maintaining confidentiality.

The Chair addressed the members stating that action on whether or not to utilize either method in the future for an executive session need not be decided today. The members were appreciative of the information provided by both Mr. Powers and Mr. Carpenter.

8. **OTHER BUSINESS-STATE TRAVEL:** Member Turner stated that at the House Judiciary Committee hearing held today – confirmation hearings for Chair Thomas and Member Turner-it was recommended that the Ethics Committee request a second legal opinion on the subject of legislative travel paid for with state funds and performing collateral campaign activity on the same trip. The opinion the committee is relying on was issued by Dan Wayne, LAA Legal Counsel.

Member Turner motioned the committee seek a second legal opinion and utilize our outside legal counsel, Brent Cole.

Senator Coghill requested some background on the discussion. Member Turner stated that it was his understanding that the House Judiciary Committee did not agree with the interpretation made by Mr. Wayne on this subject and suggested very strongly that a second legal opinion be obtained. Representative Gatto commented that it was not a committee decision but that of Chair Jay Ramras.

Senator Stevens and Senator Coghill requested additional information about the motion. Chair Thomas explained it was the same topic discussed at numerous committee meetings about splitting out the cost of campaigning if on state travel. Mr. Wayne's opinion is that the two cannot be combined.

Mr. Wayne referenced AS 24.60.030(a)(5) which provides for a prohibition on the use of state resources for political fundraising or campaigning. He stated there were no exceptions.

Representative Gatto stated that it was difficult to determine when campaigning really ends. Even when an election is over, is campaigning really over.

Member Walker and Chair Thomas stated they felt that the House Judiciary Committee was requesting a second legal opinion and focused specifically on instances where there clearly was a fundraiser or a campaign event occurring while a legislator was traveling on state business.

Representative Gatto stated he felt the House Judiciary Committee was referring to when the instance was not clear. Mr. Walker requested Rep Gatto provide an example of when you're campaigning or not.

Representative Gardner provided an example of herself traveling from Juneau to Anchorage, on the state's dime, for a constituent meeting, which would be the primary reason for being in Anchorage. She would be prohibited from stopping by party headquarters to say hello and ask about the status of recruitment. She does not ask for money or votes, but her visit to headquarters is still considered a political activity. Representative Gardner provided another example of herself at a coffee shop and running into someone she knows and they have a conversation on candidate recruitment. According to the current ruling, she stated she would be in violation of the Ethics statute.

Senator Coghill provided a broader example, noting that it is also one of the reasons why we have a bicameral legislature. We are elected every two years because we are closest to the people. We have to be very responsive to what they are thinking politically and economically. When you travel to somewhere, those people are going to be part of your voice. There are also campaign finance laws which makes you question when are you taking money and when are you putting influence into an issue that has political connotations to it. Whether it is dollars, a newsletter, or radio show you are on, you are going to be expressing political opinions, etc. However, going to headquarters and accepting a check from someone is what is focused on. We must find a way that says you are what you are but cannot use state resources to promote just a political campaign. For example, Sen Coghill stated that if he were the governor and using the state's jet to fly around

Alaska and have campaign functions in every city he was visiting, he would have people saying that's unethical. However, if he were flying all over the state dealing with a range of things, and at one of the locations, people wanted to support him with a "gathering", that would not be entirely unethical. It is a reasonable thing for people to do. We have to figure out a way to say when it is unethical. Senator Coghill recommended using the broadest of language possible. Presently, there is a very strong prohibition. When he hears people say they elected him and are going to support him, does it mean they are going to promote his candidacy or send him money? It is a commitment over the airways that he has to deal with. He stated the Senate is further away from the people and probably has a buffer zone that's not as generous as the House of Representatives, but that is the way we made the system. Part of the voice of the people is that whole support base that is campaign related.

Chair Thomas asked if there were any objections to Member Turner's motion. Representative Gardner stated it was not clear to her if this request was made by a committee or one legislator. Any legislator can request a legal opinion without obligating the Ethics Committee to obtain one and bear the cost of getting an outside opinion. Member Turner stated the request was directed at him from the House Judiciary Committee. Member Turner stated that he felt the House Judiciary Committee was blaming the Ethics Committee for the wording in the opinion. Member Turner stated a second opinion shows that the Ethics Committee has done its due diligence as requested by House Judiciary. (Note from staff: The committee did not issue an advisory opinion on this subject but has discussed this subject and the draft opinion at five committee meetings beginning in December 2007.)

Senator Coghill voiced that an outside counsel is valuable because this person is a disinterested party on what goes on in the Capitol. Mr. Wayne did not see any reason for anyone in his office to object to the second legal opinion.

Motion passes.

- 9. ADJOURN:** The meeting adjourned at approximately 4:30 p.m.