

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK
(907) 269-0150
FAX: 269-0152

Mailing Address:
P.O. Box 101468
Anchorage, AK.
99510 - 1468

MINUTES from July 12, 2011 FULL COMMITTEE MEETING Anchorage LIO, Room #220

1. **CALL THE MEETING TO ORDER:** Chair Dennis “Skip” Cook called the meeting to order at 9:11 a.m. Members present: Representative Chris Tuck, Representative Carl Gatto, Senator Gary Stevens, Senator John Coghill, Toni Mallott, H. Conner Thomas, Gary Turner, Herman G. Walker, Jr., and Dennis “Skip” Cook. Staff present: Joyce Anderson, Administrator. Dan Wayne, LAA Legal joined the meeting at 11:00 a.m.
2. **APPROVAL OF AGENDA:** Motion made by Member Thomas to approve the agenda as written. No objections. Motion passes.
3. **APPROVAL OF MINUTES:** Chair Cook requested a motion to approve the minutes of meetings held on February 28, 2011. Motion to approve Full Committee Meeting minutes made by Member Turner. There were no objections and minutes were approved. Motion to approve House Subcommittee Meeting minutes made by Member Thomas. There were no objections and minutes were approved. Motion to approve Senate Subcommittee Meeting minutes made by Member Thomas. There were no objections and minutes were approved.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
 - a. **Ethics Training Update** - Ms. Anderson reported that as of today, 508 employees have completed training. All sixty legislators have completed training. Twenty six employees completed training online, and there are seven new employees who have yet to take the online training. In addition to Ethics training, informal “interim” meetings are being scheduled; the first one has been scheduled for Tuesday, July 26, 2011, at 10:30 a.m., at the Anchorage LIO for new legislators and their staff, and any other offices in the Anchorage area who may be interested in

attending. An interim meeting for the Fairbanks area is being considered for August. Ms. Anderson stated that she will likely hold one in the Mat-Su, Juneau, and Kenai areas as well. Interim meetings will be offered every other year. Anchorage LIO staff and IS Department staff will also speak briefly at the Anchorage interim meeting about their departments and services they provide. This was a suggestion made by a new staffer.

Topics at the interim meetings will include redistricting and “cold mailing” newsletters and campaigning. Ms. Anderson stated she has already received many phone calls as to whether legislators may make contact with constituents in their new districts and/or send out a legislative newsletter. Past interim meetings have been successful as they are informal and in a smaller group setting where specific questions can be asked. Ms. Anderson noted APOC was interested in joining Ethics to talk about the POET account and filing legislative financial disclosures.

Chair Cook commented that Ethics training has really grown over the years, as well as providing advisory opinions. He stated Ethics is providing a great service by making themselves more accessible in offering “interim” advice. Member Thomas commented he was impressed with the number of people who have completed training. Ms. Anderson noted LAA Administration has been very cooperative in assisting with a list of current staff coming on board and providing information on who is salaried and hourly. Hourly employees are not required to complete training, unless they work for a legislator. This procedure has enabled the office to ensure all have completed mandatory training.

- b. Website Update** - Ms. Anderson stated two new sections have been added to the Ethics website: a section on what it means to “sanction” a charity event, as well as a current list of charity events sanctioned in 2011, and a fact sheet on the internship process.

Ms. Anderson also pointed out letters were sent to each person or organization who requested a charity event be sanctioned stating what it means to have an event sanctioned by Legislative Council and clarifying how sanctioning a charity event relates to participation by legislators and legislative staff. Senator Stevens asked Ms. Anderson why Legislative Council was sanctioning events after the fact instead of prior to when the event is being held. Is there anything that can be done to get these notifications sent out before the event takes place? It was Ms. Anderson’s impression charity events were sanctioned prior to the event. Ms. Anderson speculated it might appear the sanctioning is after the fact because the process allows for the Chair of Legislative Council to sanction a charity event prior to a full committee meeting with a notice is then sent out by Pam Varni’s office. The request then goes before the committee as a formality. Senator Stevens asked Ms. Anderson if she would follow up

on this to ensure events are sanctioned prior to being held. Ms. Anderson stated Senator Stevens might be referring to the Midsummer Gala in the Garden, and she would follow up on this issue.

Information on the parameters needed for an internship to be approved along with the appropriate statutes, the Ethics Committee's Rules of Procedures and advisory opinions is now in a document called, How to Request Approval for an Internship. The Ethics office often receives calls from legislative offices and outside groups wanting to know how they can get an internship approved. Ms. Anderson also noted a change that was made on page 2 of the "How to" document, at the top of the page, under University of Alaska Internship Program Only, she added another line that says, "*Program provides for interns during the legislative session.*" The University of Alaska internship program is only set up for legislative session and statutory authority is under Legislative Council.

On July 6, 2011, an internship through **Bob Jones University** was approved. An intern was placed in Rep. Lance Pruitt's office.

- c. **Ethics Disclosures** - Ms. Anderson summarized the document. Senator Stevens commented that some Senators have had a second and third late disclosure. He explained part of the problem was because they're due within 30 days of travel instead of when most of travel reports are due to LAA Accounting, which are within 60 days of when the travel occurred. He would like to see some consistency in these deadlines and change the 30 day requirement to 60 days. Senator Coghill stated it is in his Bill. Chair Cook stated the 30 day requirement is in statute; therefore, the committee cannot change the deadline.
- d. **Electronic Management Activity Log** - Ms. Anderson provided members an update on the progress of the new Electronic Management Activity Log. The database was created by LAA I/S employee Heidi Goshu, and Ms. Anderson stated she was very pleased with the results. She can now produce a Staff Report of Q&A's received on demand by subject, date, etc. This will save a lot of time and result in less paperwork. Members voiced it was still time consuming for them to read through a 44 page Staff Report prior to a committee meeting and agreed they would prefer receiving the report E-mailed to them each month instead of just at a committee meeting. Members also liked the report was in order by topic. Ms. Anderson agreed to E-mail the report to members each month on a trial basis. The committee will revisit this issue after a few months. Ms. Anderson stated the database is an excellent resource tool when future questions of the same nature are received.
- e. **Informal Advice Staff Report** - SEE ITEM 5(d)

6. PARTICIPATION IN CHARITY EVENT – Shoot for the Cure:

Ms. Anderson read aloud the FACTS, ETHICS STATUTES, and ISSUES at hand, PAST PRECEDENT and ADVISORY OPINIONS-relevant to the issue, all of which are found on Pages 1-3 of 24, in Item 6, in today's packet.

Note: Sen Giessel joined in the meeting via teleconference. She requested to speak first since she was attending a meeting out of town.

Note: Member Turner recused himself from discussion because he is serving on a board with the organizer of Shoot for the Cure and considers one of those involved as a friend. Chair Cook stated Member Turner could remain in the room but would not be participating in the discussion.

Ms. Anderson stated the reason these issues were brought before the Ethics Committee was due to the fact there were so many questions that needed to be answered before any advice would be given. What was the value of gift? Should the cost of the shells be factored in with the cost of the dinner? Was the charity event an educational event if there was a presentation about cystic fibrosis 20 minutes long?

Chair Cook gave the floor to Senator Cathy Giessel. She stated she would like to provide clarification on the "background" Ms. Anderson provided. The first item she felt was not 100% accurate was the length of time Ms. Anderson reported the education portion of the event lasted. Giessel recollected she told Ms. Anderson, "at a minimum, the physician spoke 20-30 minutes." Sen. Giessel emphasized she was estimating and did not time the speaker. Sen. Giessel also added she spoke to another person who attended the event and the education portion lasted a "minimum of an hour". Additionally, Sen. Giessel was reminded there was more than just the physician who spoke; the sponsor of this event also spent a considerable amount of time presenting her story of her own daughter who has cystic fibrosis and the medical care her daughter has had to receive. Also, there was someone who was heading up a different aspect of fundraising for cystic fibrosis, who also shared a personal story about how cystic fibrosis affects children. Senator Giessel noted that as a nurse practitioner, and in order to renew her license, she is required to get medical education hours, and the presentation that Dr. Ken Olivier, from the National Institute of Health, and the National Research Institute of the United States, gave would have qualified for certified medical educational credit. It was an excellent, in-depth presentation, and she was quite impressed Dr. Olivier was presenting this for the public.

The second item Sen. Giessel stated she wanted to point out that was stated as "fact" in the handout was the term "entry fee." It was not a fee. It was a donation. There were also levels of donations presented as options for folks who wanted the opportunity to bring other folks in and sponsor a team. These were donations, and a choice by the individual, not an entry fee. No one was given tickets or an entry certificate to present in order to participate.

The last item Sen. Giessel addressed was the value of this event. She referred to the second to last bullet under FACTS, Page 1, ITEM 6, how lobbyists are prohibited from giving a gift of a ticket or entry fee to a charity event with a value of \$250 or more. She

then provided an analogy to the Kenai River Classic event she attended last week. For an individual from the outside to participate in the event, you had to fill out an application or registration form. The cost to participate was \$4,000. She participated as an invited legislator. She received a value declaration from the Kenai River Sportfishing Association, itemizing the value of each segment of the event; the food provided, gifts received, such as a jacket, gloves, etc. The value declaration was approximately \$550--noting she is citing this from memory and does not have the document in front of her--but there was a clear entry fee of \$4,000. The same analogy applies here. There was a suggested donation, which the person who sponsored my team chose to make of \$1,500, but the stated value of the cost for participating, was \$68, as stated by the event sponsor, which does not exceed the \$250 limit.

Sen. Giessel stated the Ethics Committee was a regulatory body and consistent application of the rules was paramount. To be consistent, the "Shoot for the Cure" would have to be viewed in the same way the Kenai River Classic event was viewed; comparing the actual entry fee to the value declaration for the event.

Representative Gatto stated the cost of 75 shells was \$50 and asked Sen Giessel if each participant consumed 75 shells. Senator Giessel answered yes and that it included skeet, trap and five stand. Rep. Gatto asked Chair Cook if the \$50 cost was a deductible and needed to be deducted from the \$300 cost of the donation. Chair Cook referred his question to Sen. Giessel as he was uncertain how the value of \$68 was determined, more specifically, if that was the cost of shells, plus cost of something else like food. Sen. Giessel referred all to the fourth bullet from the bottom, and confirmed that Karen Rey, the organizer of the event, determined the cost of 75 shells was \$50, and cost of dinner was \$18, which equals \$68. Chair Cook commented the committee needs to ask themselves, do we look at that number and always accept that number, given by the sponsor, as the value of the gift for participation as opposed to an entry fee.

Ms. Anderson commented in regards to the 20 minute presentation that she had sent an e-mail to Karen Rey asking for confirmation of the facts as stated. She did not receive any comment back from Ms. Rey. Chair Cook commented that the length of a presentation at a dinner or luncheon is usually 20-30 minutes because people's attention spans don't necessarily go longer than that at such a function. He noted there may have been more educational components than known which leads him to question whether or not this becomes a matter of legislative concern.

Member Walker asked Sen. Giessel, in reference to her stating she was an LPN and this event would qualify as a CLE to maintain her license, if she was actually issued a CLE certificate. Sen. Giessel clarified that she was not a Licensed Practical Nurse but an Advanced Nurse Practitioner. She proceeded to state it was important to explain the difference because the presentation was about the advances in the treatment of cystic fibrosis; just a segue into the relevance for a legislator, since it adds to the cost of our healthcare and to our Medicaid burden. The presentation was not approved for certified medical education credits (CME's) because she was the only healthcare provider in the audience, and to receive CME credits, the speaker has to make application to a certifying

body and that's a fairly expensive process. Her comment was this would have met those qualifications; it had measurable objectives, pharmaceutical information, and advances in medical understandings in anesthesiology. All components of a good education program for medical professionals.

Member Thomas asked Sen. Giessel if the \$1500 could have been less, and/or if she knew how that worked. Sen. Giessel said she did not know, but felt it could have been more, making it optional for the individual. Member Thomas asked if she was aware of who paid her donation/entry fee. Sen. Giessel stated yes, she was invited to participate by Pat Carter who is a lobbyist. Member Thomas also asked her what she thought the event was or what her thoughts were about it. Senator Giessel understood it to be a charity event to raise money for cystic fibrosis research. She was very interested in participating in fundraising to promote research in this area. Member Thomas asked what activities she participated. Sen. Giessel stated skeet, trap, and five stand, the dinner that evening, the silent auction and live auction, the usual things that happen at a fundraiser. She and her husband, who also attended, had the option to bid on items. Member Thomas asked if it was during the dinner the presentation occurred. She responded yes.

Senator Coghill asked Sen. Giessel if it was her understanding the gift to her was the \$68 or did she anticipate the donation would be made in her name. Sen. Giessel stated that it was her understanding the gift to her was the value of the items would be consumed, such as the cost of the shells and dinner; similar to the value declaration she received from the Kenai River Sportfishing Association. Senator Coghill asked if her name was identified with the donation. She responded no and it would have been Pat Carter who actually made the donation.

Chair Cook excused Sen. Giessel so she could return to her conference. Senator Giessel asked the Ethics Committee to consider checking to see if legislators--who participate in charitable events--whether sanctioned or not--actually attended the educational portion of the event because it was a pivotal piece of information. She indicated she would like to stay for the committee's deliberation but had to return to her conference.

Chair Cook offered the floor to Representatives Craig Johnson and Dan Saddler for comments. Rep. Saddler thanked the committee for accommodating their agenda and recognizing the difficult and challenging job applying ethical laws to different situations like this. He served as a departmental ethics supervisor in the past and understands the challenges involved. He stated he respects the state's ethics laws, although he does not feel he violated them. His main issue of concern is as Sen. Giessel indicated earlier and is laid out in ITEM 6, Page 2, ISSUES, Number 1. First, the Ethics Committee claims he received a gift of \$300 in value from a lobbyist. He does take exception to this statement. First, he did not receive goods from a lobbyist but from the organizers of the "Shoot for the Cure" cystic fibrosis event. He did receive some items of value for participating, including shot gun shells and a meal. These did not come directly from Pat Carter but from the event organizers. Mr. Carter did not buy the meal or shells nor would you find his receipts reflecting he had bought them to pass on to me or any other participants on

the team. Second, he did not believe the value of any of the gifts were in excess of \$250. As discussed, the shells and meal provided were valued at \$68 by Karen Rey, Co-Chair of the event. Additionally, the Chairman of the House Rules Committee indicated to them the cost of attending the event was under \$250. Third, it is true he was invited to participate by Pat Carter, who is a registered lobbyist; however, it was not his understanding that Mr. Carter had bought him a ticket. He did not receive a ticket nor did he see anyone else at the event with a ticket, nor had any idea there was a set price for participation. If a member of the public wanted to attend, he did not know for certain what the standard ticket pricing would be since there were different financial levels. Team sponsors made contributions to this event in various amounts, but that doesn't vary the value of what each team member received. Each received that same \$68 in value.

Rep. Saddler then offered to tell an analogy of a cherry pie auction. If you assume the ingredients for a pie cost \$10, and each pie had 4 pieces, and the sale price of pies at auction varied from \$10 to \$1,000, depending on how much of the personal contribution each bidder seeks to make to that charity. Does that mean someone who eats one piece at \$10 pie receives a value of \$2.50, but someone who eats one piece at \$1,000 pie receives a value of \$250; or if he eats 2 pieces, did he have \$500 worth of pie? The differences in the amount of money paid for by team leaders constitutes variations in the amount of their personal contributions to the charity and does not have a direct correlation to the value of any gift he received. Rep. Saddler stated it is argued the legislator cannot accept any gift from a lobbyist; however, he stated he understood the Shoot for the Cure has been going on for 4 years, but does not know if legislators have taken part in it in the past, and if so, whether or not lobbyists have been involved and if the Ethics Committee has addressed those issues. It is important to have consistency and predictability in interpreting and applying these laws. Lastly, the Ethics Committee may decide the Shoot for the Cure falls in the category of an event providing information on a matter of legislative concern. As Sen. Giessel said, we did hear a very detailed presentation during dinner; he would have estimated about a half hour, possibly more from a medical doctor, and yes, Karen Rey did speak about the situation with her daughter who suffers from cystic fibrosis. He found the presentation interesting and informative. In summary, Rep. Saddler stated he did not believe he received a gift from a lobbyist; he received some shells and food at the Shoot for the Cure, plus the opportunity to support the charity in other ways, in which he partook in, such as, the silent auction, buying raffle tickets, etc. If the Ethics Committee does rule that he received a gift from a lobbyist, he still would not believe the amount exceeded \$250. If the committee determines he committed a technical violation, he certainly will pay the cost associated. He also stated he hoped this proceeding will result in clear directions to him and other legislators who might consider participating in charity events in the future. He has made inquiries in the "Midnight Sun Shoot" and will make sure more questions are asked beforehand.

Ms. Anderson commented on Rep. Saddler's questions regarding previous events. Ms. Anderson stated Ms. Rey told her that in previous years, the lowest limit entry fee was \$1,000. If divided by 5 members, the amount would have been \$250 per person, the gift limit. Ms. Rey also said they raised the lowest limit entry fee to \$1,500 this year. She indicated legislators have participated in previous years.

Representative Gatto asked Ms. Anderson if there was a difference between “entry fee” and “a minimum donation?” Ms. Anderson stated it was important for the committee to give her direction on how she should answer this question and other questions relating to charity events. In the past, it was discussed the entry fee was determined to be the cost of participating in the event. With this situation, the costs involved appear to be “shells” and “dinner”. She felt the committee should determine the value of participating and provide answers to these questions.

Senator Stevens asked Rep. Saddler how he thought his constituents would view his behavior; more specifically, his participation in this event. Rep. Saddler did not feel he could make that determination. They might ask whether or not this was an event from which he benefited personally, which would be “no”; versus was he using his office to provide attention to or attract other high paying contributors to an event for a good cause. Senator Stevens congratulated Rep. Saddler and speculated that the public will be supportive of his behavior. Senator Stevens also voiced that the committee can get wrapped up in rules.

Representative Tuck referred Rep. Saddler back to his pie analogy and what it cost to make the pie. He questioned Rep. Saddler if he thought that actual cost of the event was only \$68 to put on--just the cost of shells and cost of dinner? Was the cost to rent the facility considered? Rep. Saddler said he did wonder whose money was spent to rent the hall at Hilltop and/or pay for whatever fee there was at Birchwood, however, he did not know. The issue at hand is whether or not he, as a legislator, personally benefited from a gift. As Sen. Giessel stated, he did not receive a breakdown of all the costs divided by all the participants. A fair counter question he would ask is would you pro rate according to how much was paid by your team leader, or straight by numbers?

Member Mallott asked who Pat Carter’s clients are. Representative Saddler stated that he did not know. He knew Mr. Carter from his former days as a staffer and is a friend. He presumed Mr. Carter was looking out for his interest in the charity. He didn’t think it would have benefited his clients directly.

Senator Coghill stated one of the things they will have to deal with is the appearance regardless if the donation was made in Rep. Saddler’s name or not; and second, if it was done in the lobbyist’s name, with Rep. Saddler’s name as a participant, and if it created an attitude of undue influence. He asked Rep. Saddler how he might view this. Rep. Saddler did not believe his name was associated with the donation on the public level and his name did not appear on a program nor did he have a name plate. He was just another “shooter”. Hobo Jim was his fellow shooter who gained much more attention and therefore he believed his name would have carried very little undue influence. Ms. Anderson reported she asked Ms. Rey to specifically look to see if any of the donations were made in a legislator’s name and there was none.

Member Turner referenced AS 24.60.080(a)(2)(a) where it states legislators cannot receive a gift from a lobbyist except food or beverage for immediate consumption. Since

the shotgun shells were “consumed” at the event, does the statute apply here? The shotgun shells were used immediately at the range and not put in their pockets and taken home. If it qualifies under this statute, the remaining \$18 for a meal, was also consumed immediately, and falls under this statute.

Rep. Johnson was invited to the floor by Chair Cook. Rep. Johnson stated he would be providing a different perspective and that his knowledge was not consistent with the facts, as presented. When he was asked to participate, he asked the sponsor how much it was and he was told it was \$1,000, the same as last year. He proceeded with that knowledge, thinking in the worst case scenario, the entire donation would be credited to him. However, he would still be under the limit to accept \$250 for a non-sanctioned event. He was also working under a different premise in which he knew the person from whom he was accepting the gift was not a lobbyist. He stated he did not know the actual dollar amount until today and his sponsor didn’t even know his company actually paid \$1,500, not \$1,000. (Note: The sponsor submitted the incorrect amount on his disclosure to APOC.) He stated he believes ignorance is not an excuse for violating the law; he also believes in what the Ethics Committee does and, therefore, is prepared to accept any fines issued. He felt there were good arguments made before--he presently serves as an alternate on the Ethics Committee. One thing he would encourage the committee to do is clarify these issues because there is a gray area in regards to what is received, and so often, “we” deal in gray areas, which is what seems to get legislators in trouble. Rep. Johnson stated he did not believe he, nor Sen. Giessel or Rep. Saddler are unethical. He felt none of them did anything knowingly unethical. He reiterated his take on the matter before them was different than what the other two presented to them, but if there was going to be any punishment, he encouraged the committee to come up with some clarity on “what is the value”, “what was received”, and “what was benefited” for the future.

There were no other comments. The committee took a 5 minute break and came back on line at 10:45 a.m. Member Mallott was excused for the remainder of the meeting due to illness. Chair Cook called the meeting to order and expressed this was a complex matter and opened the meeting up for comments from the floor.

Member Thomas stated he felt none of the representatives before them today did anything intentionally to violation of the Ethics Law, and due to the complexity of issues, was hesitant to make any decisions today without guidance from a legal opinion from Dan Wayne, LAA Legal. The legal opinion would provide the committee with a position should they encounter a similar situation in the future. He recommended formulating a legal question and giving it to Mr. Wayne for review and a response.

Member Walker concurred with Member Thomas this was a complex issue and whereby defining certain parameters on what legislators can and cannot do in regards to participating in a charity event must be determined prior to taking any action. Based on the information before them, there are many factors. Specifically, when reviewing the gift statute, AS 24.60.080(2)(b), the language states a contribution to a charity event from any person at any time is acceptable, as well as tickets to a charity event, except the ticket to or gifts received at a charity event under this subparagraph are subject to the calendar

year limit on the value of gifts. In this scenario, someone has contributed \$1,500 to a charity event and invited legislators to participate in the event.

Representative Gatto stated Pat Carter made a contribution of \$1,500 but did not have to bring anyone along with him to do that, but could. He did not give the legislators tickets or give them money to donate to the cause. These legislators did something honorable and yet they are being considered in violation of a rule. He further asked members to consider the question, did they do something to benefit themselves or did they do something to benefit the charity? He did not believe the rules needed to be changed because they did not receive a ticket and they didn't receive money. They showed up on their own time, they volunteered their time to help a worthy cause.

Representative Tuck questioned whether or not they would have attended had they not been invited. It was a fun event, unlike volunteering or donating their time to the event except for the entertainment portion of the event. If it were a legislative shoot without any fundraising component to it, a lot of them would have attended for the entertainment value of the event, not necessarily the contribution. When he reads the gift statute about lobbyists versus individual contributions versus corporate contributions, more is emphasized on the lobbyist, but we also need to ask, what is the intent? Although he is not prepared to render a decision, he questioned charitable contributions, and if we consider the pie analogy (i.e., the cost of the pie), one piece of the information that should be obtained is the cost of putting on such an event to see if it needs to be weighed into the decision. Representative Tuck also agreed that there was no ill will intent and no malicious conduct for participating. However, when it comes to the length of the presentation, there was never any intent for it to qualify for educational credits nor was it designed to be qualified for credits. For him, the intent is an important factor, more so than what actually happened.

Senator Coghill agreed with Rep. Tuck in that everyone knew they were going to a fundraising event, and many were prepared to give at the silent auction or other activities. When asked, what did the legislator receive, he heard today that the expectation was they would have received the food and the shells to participate. Also, was what they chose to give to the charity in their name? If they received credit for a donation that would have been a red flag saying don't do it. What needs to be clarified is if legislators participate in a fundraising event by lending their legislative name to the event, then, what is the value? Presently, he does not believe there is anything in the statute clarifying this question. However, the question of undue influence is definitely a factor as soon as you link yourself with "lobbyist and donating money to a worthy cause." You put yourself in the position of "undue influence". They were there specifically to help raise money for a very good cause. In other words, they were brought in as an influential person under that donation. The problem arises when the lobbyist is making the donation. That's a question that also needs to be answered.

At this point, Senator Coghill did not see anything other than an educational component and fundraising component for a particular health issue. He stated he was willing to agree with a legal opinion but also willing to excuse those who attended as they thought

they were going with the idea either the gift was prorated, or the gift was really their presence along with the meal and shells. He felt there was no expectation a price was connected for participating. Senator Coghill wondered if lobbyists had not been involved if there would have been an ethical question at all. He would expect a legal opinion to state that whenever there's an indirect contribution from a lobbyist, there's going to be an issue of appearance. Although the legislators participated with a clear conscience, it was still an indirect benefit to them. Senator Coghill stated when he was involved in the rewrite of the ethics statute the following questions were always asked: what was the ethical problem the statute was trying to correct, was undue influence a factor and what was the ethical question from the point of view of a legislator and of a member of the public. They also asked themselves what is good process? Is the "process" the ethical question? In this area, there's work to do. Another question was consistency. Was there consistency throughout the statutes? Title 25, Title 24 and Title 15 all intersect. In relation to the scenario presented today, he stated he thinks the legislators participated indirectly with the contribution. However, he would like a legal opinion on this subject.

Chair Cook posed these questions: What was the public entitled to know about lobbyists' activities? What was the public entitled to know about what legislators are doing in relationship to lobbyists? This is where disclosure laws come into play. He'd like to know what the lobbyist has to report with regard to this event, assuming a lobbyist would have to report to APOC that s/he paid \$1,500 so that 5 legislators could attend this event and list the names of the legislators. Ms. Anderson provided Chair Cook and members a copy of Pat Carter's lobbyist report which was filed in June for the period ending in May. He did not report he gave any tickets to legislators to participate in a charity event. The question on the report reads, "Did you give one or more legislators or legislative employees tickets or donations to charity events?" He checked "no". The next question reads, "Did you give one or more legislators or legislative employees a compassionate gift, as defined in (the Ethics statute.)" He checked "no". These are the only two questions a lobbyist has to answer regarding gifts to legislators or legislative employees. Ms. Anderson speculated although APOC did not talk to Pat Carter, it is evident Pat Carter did not feel it was a contribution to a legislator either because he checked "no" on his report. Ms. Anderson stated she spoke to APOC about the reporting requirements and they are aware of today's meeting and are waiting to hear the direction the Ethics Committee will take to determine whether they should inform lobbyists about reporting this type of gift or not. Chair Cook asked if the amount was under \$250, would legislators still need to submit their disclosures? Ms. Anderson reported, no.

Chair Cook added another aspect to this discussion is some events become so prestigious they are considered important to be seen at the event, which can be considered a benefit to the extent it might be considered campaigning. He does not necessarily categorize this event in that way.

Senator Stevens commented on the importance of there being a clear, bright line for legislators to know what they should be and should not be doing. He was hesitant to go to an advisory opinion because often they do not provide a clear, bright line and only

muddy the waters and make it even more confusing, but it is probably the best way to go. As Senate President, he often meets with other Senate Presidents and has heard horror stories of ethical violations that are so clearly wrong you wonder how they could have even thought that would be right, but this is not one of them. He felt everyone involved should be excused. He found it a shame when ethics rules get in the way of good behavior and get to the point they discourage good behavior which has the potential of happening here.

Chair Cook stated he sensed that the majority do not want to decide on the framework for the future today. He asked if it is the committee's wish to obtain a legal opinion, and if so, what do we want to do with the matter of the three legislators here before us? Do we want to hold off or make a decision today?

Member Thomas stated the committee was better off not to say anything for the moment, such as exonerate the legislators as that would imply they were in violation, which has not yet been determined. He stated the committee is here to determine how to deal with these questions in the future. Although it may sound like it was a great thing and was probably a great thing, there is the gift provision about a sanctioned event and it's important to answer whether or not a donation a lobbyist makes is in fact a contribution or a ticket to get into the event. The legislators may have received shells and a meal, which were 'de minimis' in value, and then there is the matter of the cost of \$1,500 minimum to participate in to the event which he believes is like a an entry ticket.

Member Walker reiterated his feelings the committee should not take any action regarding the legislators, nor did he feel they violated anything. However, he agreed more clarification is needed on this issue and he recommended moving forward in obtaining an advisory opinion. He agreed with Senator Stevens, advisory opinions sometimes murky the water, but at least the committee would have a process in which to clarify or define in the future how to address these questions. In addition, it would help Ms. Anderson when she gives out advice. Member Walker was excused from the meeting at 11:07 a.m. and indicated he may return after completing his prior work commitment.

Chair Cook noted a legal opinion is simply asking for legal counsel to investigate all the legal aspects and provide some advice. It does not mean they are bound by the advice as it is a tool to clarify issues and help analyze the situation.

Senator Stevens motioned the Ethics Committee find the three legislators not in violation with regard to the matter before the committee today. No objections. Member Turner abstained from voting. Motion passes.

Senator Stevens motioned to seek a legal opinion. Ms. Anderson read Member Conner's recommendation to ask whether or not a donation is considered a contribution or a ticket to a charity event. Chair Cook stated all of the aspects discussed today should be addressed in the legal opinion, particularly how do you value the gift of a donation made by the lobbyist. Chair Cook suggested circulating the request to committee members to

LAA Legal to make sure everything they want addressed was in the request. Rep. Johnson requested the questions include one on contributions from a non-lobbyist. Chair Cook and Ms. Anderson will draft the questions.

Mr. Wayne announced his presence via teleconference at 11:15 a.m. and indicated he had been in attendance for the last 5 or 10 minutes. He stated he was present long enough to hear what had been voted on and will respond to the request appropriately. Chair Cook stated the meeting was being recorded and asked Mr. Wayne to review it prior to writing a legal opinion to hear testimonies made by the legislators. Mr. Wayne agreed.

Representative Tuck stated in the past, he has asked about the value of a donation and due to the gray areas, he has paid them himself to avoid any problems. He felt advisory opinions do not muddle things but clarify things. Chair Cook concurred. Member Turner asked if the committee would be notifying APOC of what's transpired. Ms. Anderson reported that she would be contacting APOC after the meeting today.

- 7. RECAP OF MEETING WITH APOC:** Ms. Anderson stated she and Linda Leigh met with APOC's new Executive Director Paul Dauphinais, and Assistant Director Jerry Anderson on June 28, 2011. Mr. Dauphinais and Mr. Anderson were receptive to the idea of APOC Commissioners and Ethics Committee members meeting and providing an overview of each agency.

Here is what was discussed at the June 28th meeting:

- APOC agreed to change reporting forms to accommodate ethics concerns. For example, on campaign/candidate forms, a statement informing legislators to not to list their legislative contact information was added. The "candidate registration" forms will soon include a line for a campaign website address, which will be beneficial to APOC and Ethics as it can be difficult to find campaign website addresses.
- Coordinate information on the subject of charity events and lobbyists giving tickets to legislators and legislative employees.
- Provided a comparison between Ethics disclosures and APOC financial disclosures. Dual reporting requirements in three areas. Suggested Ethics send legislators a list of close economic associations, board memberships, contracts and leases disclosed to help remind them to file the same disclosures on their annual LFDs to APOC.
- Continue working together on legislation.
- Suggested inviting APOC to legislative session ethics training classes in Juneau to talk about the POET account and LFDs. They agreed it was a good idea. Perhaps have APOC speak for 20 minutes before ethics training begins.
- On September 13, 2011, APOC is holding an all-day staff training and has invited Ethics to attend.
- The Ethics gift statute requires all "Gift of Travel and/or Hospitality" disclosures and "Gifts of Legal Services" disclosures be copied and forwarded to APOC. This is not something the Ethics office has been

doing. It is possible this requirement was put in statute because legislators were required to provide this information on their LFD at one time. However, reporting requirements have changed and this information is no longer required on the LFD. Ms. Anderson will ask to delete this requirement from statute. Currently, Ethics forwards a copy of all “Close Economic Associations with Lobbyist” disclosures to APOC since legislators still need to report these on their LFDs.

- Joint meeting: Typically, APOC holds 2-day commissioners meetings each quarter, with the next one September 14-15, 2011. Suggested committee members might be interested in joining a segment of the meeting via teleconference, or perhaps the executive director or assistant director of APOC could be invited to one of the Ethics Committee meetings. A 10 minute presentation by both sides may be helpful. Senator Stevens stated a yearly meeting between boards would be beneficial. Since APOC meets in Juneau during session and Ethics has training in Juneau during session, a meeting in Juneau at the beginning of session would be a possibility. Ms. Anderson offered to look into dates that might work for both parties.

8. RULES OF PROCEDURE – suggested changes:

- a. **Section 4, Meetings/Notice – Motions** – Ms. Anderson stated this item was tabled at the January 19th meeting. There are two versions in the packet – a long version and a short version. The long version has a different procedure for a reconsideration of a vote for advisory opinions, complaint proceedings and administrative matters. The short version has the same procedure for all three matters. Member Thomas stated the long version would prompt questions and recommended adopting the shorter version from Robert’s Rules of Order. Member Thomas read aloud the Rules of Procedures, Section 4 Meetings/Notice, short version, starting with (d) MOTIONS:, found halfway down the fourth pink page.

Representative Gatto asked for clarification of “suspended” found in (3) (D)...”the previous vote is suspended”...if that is the same as being “voided”. Members Thomas and Cook explained that it does not mean the same because if the motion of reconsideration failed, it’s still in effect. It is not in effect while you are taking a vote.

Representative Tuck asked if the committee would consider “24 hours of reconsideration” instead of “the same day”. Member Thomas stated the problem is members come from all over the state and a 24 hour reconsideration would require members to come back together for a vote. Representative Tuck asked if this meant that a motion for reconsideration had to be made on the same day of the meeting the vote was taken; more specifically, if the meeting is adjourned, then there is no opportunity to reconsider. Chair Cook and Member Thomas confirmed this was correct. Chair Cook suggested inserting “prior to adjournment” after “(B) a motion

for reconsideration must be made”. Members discussed inserting “prior to adjournment” either *after* “or” *before* “in the case of a multi-day meeting”.

Member Turner preferred the long version because it was clearer and suggested using (e) (4) (A) from the long version and edit it by deleting the words “Advisory Opinion” and deleting “within 2 days”, but keeping the rest of (e) (4) (A), which states, “based on a showing of procedural error, fraud, misrepresentation, material mistake of fact or law or new evidence relevant to the reconsideration.” This would replace (d) (3) (B) of the short version. Member Thomas asked Member Turner if he was requiring a “basis” for reconsideration opposed to someone saying s/he just does not like it without reason.

Representative Gatto questioned why the long version uses the word “canceled” and the short version uses the word “suspended”. Chair Cook stated he noticed there are differences of opinions between the two proposals before them, noting only one of them will be adopted. He further stated that Mason’s Rules of Order is very liberal and a reconsideration of a vote can be at any time without restrictions, which is what Member Turner is suggesting. Robert’s Rules of Order version is more restrictive. Chair Cook and Senator Coghill stated the Legislature operates under Mason’s Manual of Legislature Procedure. Senator Coghill stated reconsideration on a “mindset change” might be a little different and difficult as they may not necessarily fit neatly under one of these categories. The ability to reconsider a vote should be easy to do. If there’s an objection then there is a discussion. Senator Stevens concurred, you should not be required to have a reason for a reconsideration of a vote.

Member Turner withdrew his suggestion. Member Thomas made a motion to adopt the short version with (d) (3) (B) reading as follows: “**A motion for reconsideration must be made prior to adjournment on the day the vote was taken or in the case of a multi-day meeting prior to adjournment**”. No objection. Motion carried.

- b. Section 14, Complaints – Waiver of Confidentiality by Subject of Complaint** – Ms. Anderson stated at the January 19th committee meeting, the members made changes to Sections 14 and 17. In Section 14 (d) (2), “determination of probable cause” was replaced with “decision by the committee” to broaden when a waiver of confidentiality is permitted. Ms. Anderson pointed out the term “hearings” in (2), only addresses the public hearing aspect of a complaint and should be replaced with “meetings” since a waiver of confidentiality really has to do with any complaint heard by the committee. The change means someone can waive confidentiality prior to a complaint decision by the committee in both the public hearing context and when a complaint has only reached the meeting context. This change was prompted by the subject of a complaint who wanted to make

the complaint process public. Chair Cook motioned to adopt changes to Sections 14, noting the items in brackets are to be removed and items bolded will be added. (See last pink page in packet, Item 8: Rules of Procedure. Items in brackets are removed. Items bolded and underlined are added.) Representative Gatto moved to adopt changes. No objections.

- c. **Section 17, Complaints – Decisions** – Ms. Anderson provided a synopsis of the change. This section relates to confidentiality of a complaint prior to investigation. Presently, if a committee receives a complaint and there is no investigation because there is no basis for it, the complaint decision is not made public. By inserting, **However, the subject of the complaint has the right to waive confidentiality under the provisions of Section 14(d)**, the subject of the complaint would have the right to waive confidentiality. This change was prompted by the subject of a complaint who had a frivolous complaint filed against him/her. The subject wanted to make the decision by the committee public but could not. Senator Coghill shared a concern of possible retaliation occurring. Representative Tuck asked the members if putting a time limit of 30 days or 72 hours to release should be considered. Senator Coghill stated if a frivolous complaint is made public, it could become an issue when an issue was never intended. Mr. Wayne pointed AS.24.60.170(c) stating that the dismissal, the kind being discussed here, is confidential unless the subject of the complaint waives confidentiality. Chair Cook stated what this change is doing is making the Ethics Rules of Procedures consistent with the statute. Representative Tuck moved to approve/adopt the change/addition to Section 17. There were no objections.

9. **MARSTON & COLE Legal Counsel Contract for FY 12:** Chair Cook stated the contract before the committee is a renewal of the yearly contract with Marston & Cole. Mr. Cole has asked for an increase from \$160 to \$175 per hour with the paralegal hourly rate remaining the same at \$75/hour. Total amount is not to exceed is \$10,000. Member Turner questioned the amount listed in ITEM 10: BUDGET, last blue page, under Code 73750 Professional Services. The report reflects the budget allowing \$12,200 for legal counsel. Ms. Anderson stated that number is not correct and would have it corrected. Senator Stevens motioned to approve the legal counsel contract for FY12 with Marston & Cole for an amount not to exceed \$10,000 with an hourly rate of \$175 for Brent Cole and an hourly rate of \$75 for legal assistant work. ROLL CALL VOTE: YEAS: Sen Stevens, Sen Coghill, Rep Gatto, Rep Tuck, Connor Thomas, Gary Turner, Skip Cook.

10. BUDGET:

- a. **FY11 Update:** Ms. Anderson reported a balance of \$29,901 as of June 28, 2011. FY 11 ends on June 30, 2011. Bills are still being processed.
- b. **FY12 Approved Budget:** Ms. Anderson stated there was the usual increase in the FY 12 budget for staff costs. Total budget for FY 12 is \$241,500. The increase for the Administrator position was not approved.

Member Turner commented this was the second year in a row the Administrator's position had been request to be upgraded. Committee members had spoken to several legislators and were assured this would occur. Member Turner stated he was frustrated with the results and will be taking it up again next year.

11. 2011 LEGISLATION UPDATE – Senate Bill 89 Legislative Ethics, presented by Senator John Coghill: Senator Coghill stated he shared Member Turner's frustration with ethics issue. He's been trying for a couple of years to move an Ethics bill forward. In fairness, it did contain some controversial issues—more specifically, what you can/cannot do during legislative travel. This language was eventually removed from the bill. The bill was heard in Senate State Affairs. He stated prior to the hearing, he had spoken to all of the members of the committee, talked to members of Legislature but had not introduced it to someone who is a member of the other body, which might have added some action to it. He did not anticipate it stalling this year since he had the Senate President's support in some areas of the bill. It resides in the Senate Judiciary Committee with an amendment pending. Presently, as it sits with Judiciary, the bill has most of the benign elements in it, such as, the 60 day reporting for travel and clarification of charitable gifts. He is planning to go to the House and see if anyone is willing to entertain a companion bill, minus his amendment.

12. OTHER BUSINESS: Representative Tuck stated he was not going to reconsider his vote on the action taken earlier today on the charity event issue, however, he wanted to speak on the disclosure part. In looking back on the one case where the legislator was approved to receive \$375, she was required to file a disclosure since it was above the \$250 threshold. He felt that when they voted earlier, they should have considered the cost associated with the team participation. It was not disclosed in Pat Carter's disclosure report to APOC. He stated he had thought about reconsidering his vote so they could have the disclosure component added. He did not feel there was any malicious activity or intent on the part of the legislators, but felt the public had the right to know. The tough part of filing a disclosure is determining what should be disclosed. There was a \$1,500 contribution made, divided by 5 people, coming to \$300 a person. He believes when the committee reviews this subject again, the committee should consider the *cost of the event*, not just cost of the shells and dinner.

Member Walker rejoined the meeting at 12:15 p.m.

Senator Coghill stated the question at hand was the value of the gift. The organizers knew the cost of the event and had an expectation to raise money, so the cost of the event is one thing while the value of the donation was another.

13. ADJOURN: Senator Coghill made a motion to adjourn the meeting at 12:20 p.m.