

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from September 24, 2009 FULL COMMITTEE MEETING Anchorage LIO, Room 220

- 1. CALL THE MEETING TO ORDER:** The meeting was called to order at 9:11 a.m. by Chair Gary Turner. Members present at the Anchorage LIO: Chair Gary Turner, Public Member Ann Rabinowitz, Representative Berta Gardner, Senator Joe Thomas, (alternate member for Senator Gary Stevens), Senator Bill Wielechowski, (alternate member for Senator Tom Wagoner), Public Member H. Connor Thomas, Representative John Coghill and Public Member Dennis (Skip) Cook. Members absent: Public Member Herman Walker, Jr.

Also in attendance at the Anchorage LIO were: Brent Cole, legal counsel for the committee, and Representative Lindsey Holmes. Staff Members: Joyce Anderson, Administrator, and Linda Leigh, Committee Secretary.

Attending by teleconference: Dan Wayne, LAA Legal, Rep Guttenberg, LAA Accounting staff, and a representative from APRN

- 2. APPROVAL OF AGENDA:** Chair Turner announced that the Senate Subcommittee meeting was canceled. Rep Gardner moved to approve the agenda. Agenda was approved; no objections.
- 3. APPROVAL OF MINUTES:** Rep Gardner motioned and moved to approve minutes for the May 28, 2009 Full Committee Meeting and June 26, 2009 Full Committee Meeting. No objection. Minutes approved.
- 4. PUBLIC COMMENT:** None.

5. CHAIR/STAFF REPORT:

a. Disclosures:

- i. Update on electronic filing of disclosures: Ms. Anderson stated that electronic filing was going well. Statistics provided include the period between May and August of 2009, with 78 forms filed online and 33 handwritten, a 70% rate of online filing. Electronic filing is encouraged.
- ii. Disclosures report through September 11, 2009: Interim disclosures were published by the Senate Secretary and House Clerk on August 10, 2009, the day of the special session.
- iii. Discussion of “date of receipt” for travel/hospitality disclosures: A list of late disclosures was provided to the members. Ms. Anderson provided a summary of what the list included; first time late filing-no fine; second time late filing-fined; Ms. Anderson stated that everyone’s first late disclosure is considered a “freebee”, where no fines are imposed. A second late filing can include a fine of \$2/day, up to \$100. The fee for inadvertent late filing is \$25, and \$100 a day for refusal to file.

Ms. Anderson introduced Rep Lindsey Holmes who was appealing her first late disclosure. Ms. Anderson stated that the 30 days for filing disclosures begins on the first day of the trip, which is the date the gift is received.

Rep Holmes explained that she went on a trip to Korea that lasted 17 days and was working under a theory that differed from the Ethics office, which was that the “date of receipt” of the gift was the final date of the trip, and had 30 days to file starting from the last day of her trip. She further explained the difficulty in determining the total cost of the gift since the “gift” is not completed until the trip has concluded. In addition to collecting the cost of her trip from the United States American Council of Young Political Leaders, Rep Holmes had to get in touch with the Korean partner of American Council of Young Political Leaders who funded a large portion of this trip, and she was unable to come up with an estimated cost of the trip. Rep Holmes further noted she contacted the Ethics office to say she was uncertain she would meet the deadline. Rep Holmes felt she was making a good faith effort to file a timely disclosure and requested the committee to reconsider the decision in deeming her disclosure late. She also asked that the committee consider changing policy of the 30 days due from the beginning of the trip to the end of the trip due to the fact that “date of receipt” is not defined in the statute, nor is it found in the handbook. A person who takes a one day trip has more time to file than someone who takes a three week trip, who has less time to file. Rather than require the legislator to contact the Ethics office for additional time to file upon their return from a month long trip, Rep Holmes suggested everyone have 30 days to file from the end of their trip.

Chair Turner asked Ms. Anderson if an estimate cost of a trip was acceptable or if the actual cost of the gift was required. Ms. Anderson clarified that the statute states an “approximate value of the gift”. Ms. Anderson believed “approximate” was put in statute because there are certain types of travel where an exact cost or value is difficult to determine; such as a trip on a “tanker”, or a trip on the Hall Road.

Rep Gardner asked if an amended disclosure could be filed after an exact cost of a trip was determined at a later date. Ms. Anderson explained that she does recommend that a disclosure be filed with an estimated cost and then only file an amended disclosure if the estimate was significantly different than the actual value of the gift.

Other scenarios were presented and discussed among the members regarding the policy of filing disclosures 30 days from the start of a trip or the end of a trip and trips that involved monthly meetings throughout the year. Members agreed that in the situation of attending monthly meetings occurring throughout the year, that it was important to disclose them to the public at the beginning of these trips rather than at the end. Rep Coghill concurred with disclosing a gift of travel 30 days from the start of the trip rather than the latter and recommended certain circumstances, such as a lengthy trip, receive latitude. Rep Coghill did not think the committee should make a policy change as it is a statutory call. Rep Coghill concurred with idea of the ability to file an amended disclosure without being penalized and that we continue to provide an “approximate” value of the gift when an exact value is unknown.

Member Cook concurred with Rep Holmes’ in simplifying it all around so that everyone has 30 days to file from the last day of the trip since statute does not state exactly when a gift is considered “received”. It might be when the gift is completely delivered. The person who has a 1 day trip has the most time to disclose it. The two week trip is much more complex and this person has less time to assemble and disclose it. Member Cook felt that if the legislators wanted to file 30 days from the last day, it would not require a change in statute because the statute does not define the “date of receipt”. He agreed to disclose it to the public sooner than later but allow leeway on more complex travel.

Rep Coghill followed up stating that disclosing the gift received was more important than the dollar amount of the gift. He favors disclosing a gift when the invitation is received and accepted. Additionally, he recommended writing an advisory opinion based on the scenario. Should an unethical issue come up after the dollar amount is provided, then an amended disclosure would be appropriate. Rep Coghill expressed that when it comes to a lengthy trip, the association was more important than the dollar amount. He reiterated his favor of reporting the gift up front versus after the trip has ended.

Chair Turner added that he agreed with Rep Coghill in that when the gift exceeds the \$250 amount, then the “association” becomes the important factor. For example, if Rep Coghill rented a flat to a staffer during session and it is rented throughout the entire session. He recommends disclosure should occur at the start of the economic association rather than at the end.

Rep Coghill moved that the gift is when it is received, not when the gift of travel has been completed; when the invitation has been accepted, for example, that the disclosure is due from that point.

Rep Holmes suggested that the first day travel, gift of travel, because the first date receipt of the gift could be when they bought you a ticket, weeks or months in advance. Rep Holmes suggested making it the first day of the gift of travel rather than first day receipt of gift.

Ms. Anderson's response to the amendment from an administrative point of view was that this would create additional work on the Ethics office to try and determine when you accepted the gift. For example, a plane ticket was purchased and you didn't fly until a month later. The office would have to call your office and find out when you first accepted the gift. Ms. Anderson stated that the first date of the trip, which is when you actually went on the trip, would be more conducive. Members concurred and added that sometimes, a plane ticket is purchased but then the person is unable to go on the trip. More discussion and clarification continued and Member Cook recommended adding "a good faith" approximate value of the gift to the amendment.

Rep Coghill moved to establish the date of receipt of the gift for travel and/or hospitality as beginning on the first day of the trip with a good faith approximation of the cost. The 30 day timeframe begins on the first day of the trip.

Roll call vote: Yeas: Rep Coghill, Rep Gardner, Sen Thomas, Sen Wielechowski, Skip Cook, Ann Rabinowitz, Gary Turner. Motion approved.

H. Conner Thomas joined the meeting at 9:45 a.m.

Rep Holmes restated her request that the committee accept her filing, given that she was acting in a good faith effort and was under the mistaken impression in filing and believed her disclosure was filed on time. Motion passed unanimously.

Members took a 5 minute break; reconvened at 09:55 a.m.

Chair Turner requested that Rep Coghill look at a statutory language change with regards to the last motion. Rep Coghill accepted.

5. CHAIR/STAFF REPORT:

b. Ethics Training:

Ms. Anderson provided the members an update on Ethics training. Since training has become mandatory, the Ethics office has been able to track returning staffers and new staffers through a notification process from the state. This enables the Ethics office to contact new employees and notify them of the mandatory training. Linda Leigh has been assigned to maintain a list of those who need to be trained and those who have completed training. The online training is available for everyone who can sign onto the computer. The online training has 4 segments with questions and answers at the end of each segment. There is the option to make a comment at the end. Presently, there are 34 people who need to complete training, 4 people have completed the online training as of today. When a person has completed training, an e-mail is

automatically sent to the person as well as the Ethics office with their name and department.

Ms. Anderson noted that Ethics training is not required in 2010. Training will continue to be offered at the beginning of session for new employees as new employees are still required to take the training within 30 days of employment.

Rep Gardner asked what is available to encourage the 34 people who currently need training. Ms. Anderson stated that there were no sanctions in the statute regarding training and there have been a couple of people who have been notified and still have not completed training. The Ethics office continues to work with those who have yet to take Ethics training.

Rep Coghill suggested notifying leadership of those who have not complied.

Rep Gardner asked the members whether or not we should consider implementing a timeline in statute and have the same consequences for late filing; \$2/day up to \$100 for exceeding the 30 day requirement. If leadership is ineffective, perhaps a penalty should be imposed for anyone who refuses to comply. Chair Turner concurred with Rep Gardner in that we should treat the failure or refusal to complete training in the same manner we treat the failure to file a disclosure.

Rep Coghill stated that prior to having the ability to complete training online, he was reluctant to impose a fine for those who did not comply with training. However, now that training is offered online in addition to classroom training, he would consider imposing a fine to those who have been notified but not yet complied.

Additionally, Rep Coghill asked Ms. Anderson how difficult it would be to modify any of the recorded training segments. Ms. Anderson stated Channel 4 had indicated changes could be made to the present video. There would be a charge but it would be cheaper than filming an entire new one.

Rep Coghill encouraged the members to take the online training to understand the concept. Ms. Anderson handed out login user names and passwords for public members.

Ms. Anderson concluded the discussion on Ethics training stating that she and Linda Leigh will notify leadership of those who have not complied with training, and notify all other individuals who need to take the training, informing them that they have 30 days to complete or leadership will be contacted. Ms. Anderson requested that Rep Coghill consider adding this to his Ethics bill.

5. CHAIR/STAFF REPORT:

c. Informal Advice Staff Report:

- i. Staff Report: Chair Turner asked the members if there were any questions on Ms. Anderson's report. Ms. Anderson summarized that the 30 pages before them is a review of specific questions asked of staff. Her report does not include informal advice or recurring questions she answers on a regular basis, such as questions on

disclosures. Chair Turner asked Ms. Anderson if the past four months were busier than the previous four months. Ms. Anderson felt that the last four months were busier due to an increase in campaign related calls - a couple of legislators have announced they are running for state-wide offices and legislative campaigns are beginning earlier. Member Cook noted that the questions are becoming more technical and commended Ms. Anderson on her ability to address these technical questions. Chair Turner concurred. Ms. Anderson responded that she does consult with the Chair for some advice. Many questions she answers often times re new questions, as they are fact specific situations which require considerable research.

(Chair Turner introduced Brent Cole to the floor at 10:10 a.m. and members advanced to **Item #11.**)

Members returned to the next item on the agenda.

- ii. Electronic Management Activity Log: Ms. Anderson introduced a new database program that she would like to use as a management tool to track activity in the Ethics office. The database would allow her to log incoming questions she receives from legislators, legislative staff and the public; the system will track the date and time of the contact, whether the contact was in person, by telephone, e-mail, etc. She and her staff will be able to access one database and make entries.

The state of Massachusetts is making this database available at no cost and is expected to be available in October of '09. Because Access is already a component on our system, IS has stated there would be no problem loading the program on the two computers in the Ethics office. The benefits for utilizing this database are provided in the packet. (No action from the committee members is necessary. This item is "For Your Information" only.)

- iii. Outreach-Visiting Legislative Offices During the Interim: The purpose of these visits is to explain what the Ethics Committee does, to be more visible and encourage questions. The idea is to be "pro-active" instead of "re-active". Ms. Anderson and Ms. Leigh have met with four legislators and their staff. All of them were appreciative of the visit and topics of discussion. Ms. Anderson focused on campaign issues, disclosures, constituent services and then answered questions from legislators and staff. Ms. Anderson plans to meet with the MAT-SU, Kenai and Fairbanks offices before the end of the year.

6. BUDGET:

a. FY09 Budget Final

\$172,726 out of \$206,400 was expended in FY09. Chair Turner noted that \$33,174 was re-appropriated to Legislative Capital Projects and asked if any of the legislative members of the committee had information why the money was re-appropriated. Members speculated why this occurred but no one knew for certain. The ethics office was not notified.

b. FY10 Budget Update

As of September 9th, \$37,622 out of \$214,800 had been expended. Chair Turner noted that no money has been expended on travel since most travel is during the legislative session with some during the interim for members to attend committee meetings.

7. **RULES OF PROCEDURE**-Record Retention sections recommended changes: Ms. Anderson recommended changing our record retention timeframe for Advisory Opinion files, confidential disclosures, public disclosures and confidential complaint materials from 2 years and 6 months to 5 years and 6 months. The reason is because the statutory timeframe for filing legislative ethics complaint was changed in 2008, from 2 years to 5 years, effective January 1, 2009.

The sections to be changed were: Section 7, subsection (c)(1); Section 7, subsection (c)(2)(B), Section 10(h); and Section 11(e). Member Cook moved to change the records retention timeframe from 2 years and 6 months to 5 years and 6 months in the sections noted. Roll call vote: Yeas: Rep Coghill, Rep Gardner, Sen Thomas, Sen Wielechowski, Skip Cook, H. Connor Thomas, Ann Rabinowitz, Gary Turner. Motion carried.

8. **2009 ETHICS LEGISLATION UPDATE – HB 193:**

Definitions of terms continue to be a “work in progress”. Ms. Anderson stated she researched other states for definitions of some of the terms to be included in the legislation but did not find much. She worked with Rep Coghill office as well. A handout was distributed referencing the term “constituent” in Kentucky and New Jersey statutes. Rep Coghill voiced the difficulty he had in defining “legislative purpose” and “constituent.” The definition highlights the problem of when does it become unethical when you help or assist someone. He commented that we have to abandon trying to define the terms and place the parameters in other places. Rep Coghill stated he would continue to devote time on the bill, should he be chosen to be a fill Senator Therriault’s seat. Ms. Anderson interjected that although there are no other states that “define” these terms, there are other states that address working with constituents and that may be the route to take. This approach would eliminate the conflict of other areas in the statute that reference constituent but may not fall within the definition; i.e., sending a constituent newsletter.

Rep Coghill provided the members another possible reference resource, Alan Rosenberg, who is interested in legislative work and the author of “Heavy Lifting.” The book is about legislative work and references constituent work. His observation could be useful.

Chair Turner and Ms. Anderson provided Rep Coghill two requests to add to the bill: 1) volunteers and interns should be required to take Ethics training; and 2) the definition of legislative employee be changed to reflect the committee’s action at the May 28,2009 meeting.

At 10:55a.m., the members broke to order lunch and reconvened at 11:20 a.m.

9. STATE PAID TRAVEL AND INCIDENTAL/NOMINAL CAMPAIGN ACTIVITY:

The members discussed various scenarios on the use state funds during a campaign season. Often times, campaign activity occurs unintentionally during a legislative purpose trip. Members discussed whether or not to add statutory language. Member Cook reminded the members there were two choices; allow pro-ration of the cost of a trip, which can be complex or leave it alone. Sen Thomas stated APOC had a procedure that they use where they split it out and he favored doing the same. Rep Coghill felt this was a policy call the legislature needs to make and suggested forwarding information to the two State Affairs Chairmen for direction rather than this committee trying to determine the answer. Rep Coghill and Chair Turner recommended inviting the State Affairs chairs to the next committee meeting in November. Sen Thomas voiced his opinion stating that for him the deciding factor would be when a fund raiser occurs during a legislative purpose trip; he would pay for the trip. He recommends the committee consider limiting the use of state funds to fund raisers. Ms. Anderson requested clarification regarding Rep Coghill's comment on a "policy call" and asked if he was suggesting a change in statute. The statute current states there cannot be any type of campaigning with the use of state resources. Rep Coghill clarified that APOC questioned whether or not partisan political activity was part of the prohibition. Vice Chair Thomas also voiced a change in statute may be necessary but that the Ethics Committee should not recommend what the changes should be and that is what we should voice to APOC. Rep Gardner was in support of Vice Chair Thomas' recommendation, and Member Cook voiced he did not think there was a consensus on making any changes to the statute. Ms. Anderson restated that the committee's response to APOC is that we have the strict ban on use of state resources for anything to do with campaigning and political fund raising and that the committee takes the position to leave any changes in statute to the legislature. The chairs of the Senate and House State Affairs committees will be courtesy copied on the letter to APOC.

10. ADVISORY OPINION 09-03, Use of State Facilities:

Chair Turner gave the floor to Mr. Wayne stating there were now two Advisory Opinions, one dated September 15, 2009 and one dated January 16, 2009. Mr. Wayne explained that this second draft is based on some facts that are amended from the facts that the earlier draft was based on. The main fact that was removed is the previous opinion was about an international organization that was holding meetings. After discussion at the last committee meeting it seemed evident that the group was a lot less formal than had been previously presented. It was categorized as a group of legislators saying let's have a meeting and why not invite some other people to attend. The group was not a church sponsored group or an organization sponsored event. Based on these new facts, the exception to a prohibition on use of government resources would apply. That exception is found in section 24.60.030(a)(2)(A), mentioned on page 4 of the draft opinion. The "personal use" exception, as it is sometimes called, allows limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties, and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use. The opinion states because the exception applies, and because of other reasons stated in the opinion, the committee finds the use of state resources for this purpose is permitted and is not a violation of the Legislative Ethics Act.

There was much discussion among the members for clarification on the advisory opinion. Mr. Wayne recommended since the first draft was never adopted, the committee should focus on the new draft. Mr. Wayne further clarified the opinion addresses whether or not a legislator or group of legislators can hold a meet in the Capitol if it's not related to a legislative purpose with invites to others outside of the legislature. Member Cook suggested removing the reference to Group A and changing the opinion to refer to legislators and legislative employees only and condense the opinion. Mr. Wayne stated the opinion is based on facts he was given, which is the reason for inserting Group A, and other facts. If the committee decides to change the facts and have the opinion revised based on different facts then what was given, the opinion can be revised. Members continued to present their input and presented various examples of what was acceptable and unacceptable.

After many suggestions made by several members, Chair Turner suggested holding a vote until the changes have been implement and the new draft is provided to the members for review. Ms. Anderson stated that members in the past have voted on conceptual changes and a new draft it then sent out for final approval. A roll call vote is required for passage of an Advisory Opinion.

Ms. Anderson offered to provide a recap of changes that the members presented today. Chair Turner agreed and Ms. Anderson presented the changes as follows:

Statement of Facts:

Page 1, Second sentence: *An informal group of legislators and legislative staff hold a weekly, religious faith- based meeting during legislative sessions in a legislative committee room in the capitol. The meetings are held at an early morning time that does not conflict with scheduled meetings of the legislature. The group notifies participants in advance of each meeting, but the meetings are also open to the public. Among those notified, ahead of time of the meetings, are current and former legislators, current and former public officers of the state's executive branch and lobbyists.*

Ms. Anderson suggested changing legislative staff to "staff to legislators". Members and Mr. Wayne concurred. However, when quoting statutory language the wording relating to staff must remain.

Conclusion:

Because the exception in AS 24.60.030(2)(A) applies, and for the other reasons stated above, the committee finds that it is not a violation of the legislative ethics act for legislators or staff to legislators to hold meetings in a public facility operated by the legislature, nor is it a violation of the act to attend the meeting.

Sen Wielechowski suggested stating the amount of time per week, assuming it's an hour or less per week, in the "statement of facts". Sen Wielechowski also commented that the Conclusion was very broad and suggested narrowing it down to saying, "the committee finds that this activity is not a violation of the legislative ethics act". Sen Coghill advised the members to keep the conclusion broad and not narrowly defining it. Mr. Wayne suggested stating that "it is limited to the facts of this opinion", and the Statement of Facts already has the limitations built in. Sen Wielechowski felt strongly

that an approximate time be stated and that the Conclusion was extremely broad from his perspective.

Mr. Wayne stated he would change all of the pages that mention Group A and legislative employees. Mr. Wayne stated the Conclusion at this point:

Conclusion:

Because the exception in AS 24.60.030(a)(2)(A) applies, ~~and for the other reasons stated above~~, the committee finds, **based on the facts of this opinion**, that it is not a violation of the legislative ethics act for legislators or persons who are staff to legislators to hold meetings in a public facility operated by the legislature, nor is it a violation of the act to attend the meeting.

Sen Wielechowski suggested the following in the Conclusion: Based on the facts of this case, these activities are not a violation of the legislative ethics act. Mr. Wayne offered to work with Sen Wielechowski on crafting the wording. Sen Wielechowski accepted.

Chair Turner asked if any members opposed tabling this item to our November meeting. No objections.

11. ADVISORY OPINION 09-04, Continuing Education Credits:

The committee was asked to revisit Advisory Opinion 94-09 regarding the acceptance of Continuing Education Units (CEU) while attending a meeting/seminar/conference on government time. AO 94-09 stated the receipt of CEU credits was a personal benefit and therefore state resources could not be used to receive the CEU's. Mr. Cole stated the personal benefit received was insignificant to the individual and therefore came to the conclusion that the additional credit was nominal enough that it should not be determined to be a "personal benefit." If there would be a cost to receive a CEU however the cost should be borne by the individual. A footnote regarding tuition reimbursement for LAA staff was added for clarity.

Rep Coghill asked for clarification on why the individual would be required to pay for the CEU when it was for a State purpose Mr. Cole stated that he spoke with Ms. Anderson and it was his understanding that in order to receive CEU credits, in some situations, you have to pay to receive these credits, which makes it a benefit to that person attending the seminar. Chair Turner added that the additional cost that a person pays for the credit is usually very nominal. Also, the jobs within the Legislature do not require Ms. Anderson, for example, to acquire a certain number of CEU credits a year, therefore, if she wants to go and pay for CEU credits, she may do so for her personal benefit to utilize it in her resume, if she chooses. Ms. Anderson confirmed that in the past, the cost for CEU credits was \$7. Rep Coghill thanked the members for the clarification.

Chair Turner suggested that a motion be made to approve the Advisory Opinion 09-04, to include Mr. Cole's recommendation to insert a footnote.

Member Cook motioned to approve AO 09-04 with the following change:

The committee now believes that “personal benefit” received by the person attending the conference or seminar that is ~~primarily~~ related to legislative interests is ~~so nominal as to be~~ *de minimis*.

Roll call vote: Yeas: Rep Coghill, Rep Gardner, Sen Thomas, Sen Wielechowski, Skip Cook, Ann Rabinowitz, H. Conner Thomas, Gary Turner. Unanimous approval.

12. ADVISORY OPINION 09-05:

a. A motion to go into Executive Session to discuss an advisory opinion request that is confidential by statute, AS 24.60.160(b), was made by Member Thomas.

13. PUBLIC SESSION: ADVISORY OPINION 09-05 VOTE:

Roll call vote: Yeas: Rep Coghill, Rep Gardner, Sen Thomas, Ann Rabinowitz, H. Conner Thomas, Skip Cook, Chair Turner; Absent: Sen Wielechowski and Herman Walker. Opinion approved.

14. OTHER BUSINESS: None.

15. ADJOURN: Representative Gardner made a motion to adjourn the meeting at 1:10 p.m.