

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from August 19, 2008 FULL COMMITTEE MEETING Anchorage LIO, Room 220

1. Call the Meeting to Order: The meeting was called to order at 8:37 a.m. by Chair Herman G. Walker Jr. Members present: Senator Gary Stevens, Senator Con Bunde, Representative Bob Roses, Representative Berta Gardner, Dennis (Skip) Cook, Ann Rabinowitz, H. Conner Thomas, Gary J. Turner and Herman G. Walker, Jr. Members Absent: None. Staff present: Joyce Anderson and Dan Wayne, LAA legal.

2. Approval of Agenda: Member Thomas made a motion to approve the agenda as amended. Item 10, Advisory Opinion 08-05, Use of State Facilities, was tabled until the next committee meeting. Member Turner asked that the subject of “alternate public members” be added to the next agenda. Hearing no objection, agenda approved.

3. Approval of Minutes: Representative Roses made a motion to approve the Full Committee minutes from June 2, 2008. Hearing no objection, minutes approved.

4. Public Comment: Theresa Obermeyer provided comments to the committee on the subjects of the PFD board and the Alaska Bar Association.

5. CHAIR/STAFF REPORT

5(a). Informal Advice Report: Report covers the period December 1, 2007 through July 31, 2008. Routine questions are not included in the report. Member Thomas asked if there seems to be an increase in the number of inquiries received. Ms. Anderson reported because of the changes in AS 24.60, the climate concerning ethics, and the fact this is a campaign year, there are definitely more inquiries. She looked at the increase as positive. Ms. Anderson pointed out a change on page 31 of the report. The second to last Q/A should read as follows: “Determined the public members of a legislative task force are *not* included in the applicability section of the Act.” No questions or other comments from committee members.

5(b). Update on Mandatory Ethics Training: The ethics training video was available on-line beginning June 30, 2008. Twenty-two staff was notified of the need to complete training by July 31, 2008. Four staff still need to complete training and were contacted this week. Training consists of reviewing the PowerPoint presentation along with the training

video. Completion of a training certificate acknowledging review of the materials is required. Training is a work-in-progress as this point.

Staff suggested an evaluation form be available as part of the training in 2009. A review of what other states offer will be researched as a means to improve our training. Training for 2009 will consist of a refresher course for returning legislators and staff and the basic course for new legislators and staff.

Ms. Anderson reported on APOC lobbyist training. Out of the ninety-nine registered lobbyists, 51% completed the training on-line and 49% in-person. Many lobbyists however took both the in-person training and on-line training. A majority felt the in-person training was the most beneficial due to the interaction between the administrator and other lobbyists. For 2009, APOC is incorporating a test for the on-line training. There will be a series of questions that are multiple choice. No scores will be kept. APOC is considering scheduling additional in-person sessions for 2009 to accommodate the increased request for this type of training.

Staff suggested our on-line ethics training incorporate a multiple choice test as well. No comment from the committee.

Legislative staff who did not work longer than 30 days, such as for a special session, is not required to complete training since training must be completed within 30 days of hire. They are however required to complete all disclosures and follow all requirements of the Legislative Ethics Act.

Senator Stevens suggested Ms. Anderson contact Pam Varni, LAA Executive Director, to discuss new legislator training sessions, scheduled the week prior to the beginning of session, to see if they could be tailored more in the area of "how to be an effective legislator." He feels the entire training program could be improved. Ms. Anderson will follow up. Senator Stevens also suggested articles on what is happening in other parts of the country on ethics be forwarded to the committee and included in newsletters.

5(c) Disclosures

5(c)(i) Update on electronic filing of disclosures: The tentative completion date has been moved to the end of September or October. The intent is to have the system fully operational for the 2009 legislative session.

Senator Stevens asked if disclosures would be required to be filed on-line or if they could still be filed on paper. Staff reported disclosures, at this point in time, could be filed both ways but the intent is to have all disclosures filed on-line in the near future.

5(c)(ii) Disclosures through August 8, 2008: Staff reported the list of disclosures from January 1 through August 8, 2008 is on the Ethics web site for review. Four first-time late disclosures were received: Rep Johansen, Rep Roses, Karen Schuessler and Nancy Videll. Additionally, two legislators were fined for their second late disclosure: Rep K. Olson for

\$34 and Rep R. Samuels for \$36. Rep. Bob Buch was fine \$25 for an inadvertent late disclosure.

5(c)(iii) AGIA Disclosures: Staff reported nine late “Gift of Travel/Hospitality” disclosures were received from legislators and staff who attended the Governor’s briefings on AGIA in Anchorage. Travel paid for by state agencies requires disclosure. Several advisory opinions have addressed the requirement for this type of disclosure. The disclosure is due within 30 days from the beginning of the trip. Staff is recommending all nine disclosures not be counted as late due to the busyness of the special session.

Senator Stevens questioned why travel paid for by state agencies must be reported since the reimbursement is already accounted for by the state agency. Representative Gardner stated she receives a report showing all reimbursement she received from the legislature and state agencies for trips for legislative business. Ms. Anderson explained there is an internal accounting of travel expenses and an external accounting of travel expenses. The internal accounting is through LAA Accounting and the external is by filing an ethics disclosure with the Ethics Office. The public is able to call two places to obtain this public information.

Senator Stevens would like to see this item on the next committee agenda for discussion to simplify this process. Representative Roses also asked for a further explanation. Why is it necessary to file a report when a state agency pays for a trip? Both Member Thomas and Cook questioned why this type of reimbursement is defined as a gift under AS 24.60.080. Ms. Anderson suggested perhaps another advisory opinion be issued clarifying this question.

Chair Walker will place this item on the next agenda for further discussion.

Senator Bunde made a motion to accept the nine late disclosures as timely. Hearing no objection, motion carried.

5(c)(iv) Compassionate Gift Disclosures Report: Staff reported the report was for informational purposes only. The provisions allowing a compassionate gift were changed this year – the limit of \$250 was removed. A list of lobbyists and the amount of gifts received by Representative Richard Foster was outlined. No comment from committee members.

5(c)(v) Appeal of fine by Representative Bob Buch: A fine of \$25 was imposed for an “inadvertent” late filing by Rep Buch. The disclosure was 199 days late. Discussion by committee members. Rep Buch was not present for the discussion. Staff reported there was no record of receiving a disclosure via fax from Representative Buch. Member Cook stated we should excuse Rep Buch because it was his first late disclosure. Senator Bunde made a motion to repeal the fine due to extenuating circumstances and the fact Rep Buch called the error to the Ethics Committee attention after 199 days. A roll call vote was taken: NO – Chair Walker; YES – Sen Stevens, Sen Bunde, Rep Roses, Rep Gardner, Members Cook, Rabinowitz, Thomas and Turner. Motion carried. Members Thomas and

Turner asked that the record reflect that their vote was because it was Rep Buch's first late disclosure.

Senator Stevens suggested staff remind offices to check to make sure the disclosure is received. Ms. Anderson reported the office is now providing notification of all disclosures received.

6. MARSTON & COLE CONSULTING CONTRACT

a. FY 08 Extension of Contract until August 31, 2008: Chair Walker pointed out the committee approve the extension via email and phone and now needed to formally have a motion and vote in an open committee meeting. Senator Bunde made a motion to approve the extension of the FY 08 contract with Marston & Cole until August 31, 2008 in an amount not to exceed \$10,000. Hearing no objection, motion carried.

b. FY 09 Contract from September 1, 2008 through June 30, 2009: Staff reported the same hourly rate of \$160 for Mr. Cole and Ms. Schierhorn and \$75 for legal assistants will remain in place for the FY 09 contract. The contract will be for an amount not to exceed \$10,000. Representative Roses made a motion to approve the contract with Marston & Cole for FY 09 for an amount not to exceed \$10,000. The committee chair will serve as the project director. Hearing no objection, motion carried.

7. STATE PAID TRAVEL AND COLLATERAL CAMPAIGN ACTIVITY: Ms. Anderson reported there are two changes to the letter in the packet: on page 1, second paragraph, "fourcommittee" should be changed to "four committee"; on page 2, second paragraph, remove "not permitted" and insert "prohibited" instead.

Member Thomas moved to approve the letter. Discussion held by committee. Representative Gardner gave the scenario of traveling to Fairbanks, whether from Juneau or Anchorage or another place, and running into a candidate and asking how it was going and maybe you should talk to so-and-so and other things. Under the specifics in this letter, this type of activity would be prohibited. Senator Stevens gave another scenario: He traveled from Juneau to Anchorage, drove to Cooper Landing, then Seldovia for a meeting which took four days. What if he had a fund raiser in Seldovia when he was there – he would have been violation.

Member Turner asked for clarification as to what is allowed and what is not. Ms. Anderson went over the letter and pointed out that under current statutes it is very clear that partisan political activity cannot be performed when state resources are used, such as traveling on the state dollar. The committee is making a recommendation in the letter that if the legislature adopted an exception to permit partisan political activity there should be a pro-rated cost allocation.

Chair Walker pointed out that the committee is only allowed to interpret current statutes that the legislature approved. Representative Gardner talked about incidental use. Mr. Wayne, LAA Legal, pointed there is no exception in AS 24.60.030 for this type of use. However, AS 24.60.030 allows for "personal" use but again there is a distinction between

personal use for private benefit versus partisan political activity. De minimis use may include the type of example given earlier by Rep Gardner but that would be a decision the committee would have to make on a fact-by-fact basis. Senator Bunde would like de minimis to stay part of the discussion.

In regard to de minimis, Senator Stevens recalled that recently he was in Cooper Landing and at a senior function he stated that we (meaning the Senator and Representative representing the district) have a great team here. Did he violate the Ethics Act? He is not running for election but the representative is.

Senator Bunde asked if the committee should look at legislation in this area. Senator Stevens would like the legislature to change the law prior to sending the letter to APOC. Member Cook feels the letter should be sent now explaining current statute restrictions. If the laws change, then APOC should be notified.

Representative Gardner made a motion to amend the letter to read: Incidental partisan activity with no personal benefit to the legislator and no additional cost to the state is not a violation of AS 24.60. Mr. Wayne stated the amendment does not comport to the law. The amendment could be a recommendation only. He suggested using the terms incidental and/or nominal. Rep Gardner wanted the intent to be incidental and not nominal but would consider using both of the terms. Mr. Wayne suggested these suggestions may be a proposal to the legislature but the current statute does not allow for this scenario.

Member Thomas suggested saying “appears” versus “does not” apply in second paragraph on page 2. “De minimis use of a legislative resource for partisan political activity *appears to be* prohibited under AS 24.60.

Representative Gardner withdrew the amendment. Member Thomas made a friendly amendment to use “appears to be.” Ms. Anderson pointed out several advisory opinions recently issued were very clear in that this type of activity was prohibited and was not comfortable with the amendment. Member Thomas withdrew the friendly amendment.

Senator Bunde recommended this topic be an item at a future meeting for possible legislation. The underlying problem is to change the statute.

Chair Walker called the question: Nays – Senator Stevens; Yeas – Senator Bunde, Rep Roses, Rep Gardner, Members Thomas, Cook, Turner, Rabinowitz and Chair Walker. Motion carried. Letter will be sent to APOC within the week.

8. ADVISORY OPINION 08-03 Constituent Services – requested by the Ethics Committee

Chair Walker asked Ms. Anderson to give an overview of the opinion. The committee asked to define the boundaries in relation to the use of state resources when providing constituent services. It is important to note that this advisory opinion supersedes and is contrary to AO 07-04 adopted on December 12, 2007, and is so noted in this opinion.

Ms. Anderson pointed out that “legislative action” is defined in statute but “nonlegislative purpose” and “legislative purpose” is not defined. In the opinion the committee concluded that legislative purpose has a broader meaning than legislative action. She also pointed out that it is not the committee’s intent to interfere with a legislator’s methods of performing constituent services but to provide guidelines with regard to the use of government resources. The opinion looks at constituent services in the areas of moving the constituent’s concerns forward, making sure everyone involved knows what they need to know and urging government to take timely action.

The opinion focuses on the difference between performing constituent services and advocating for a constituent’s private interest. The ten hour limit stated in AO 07-04 is not mentioned in this opinion. The volume of public resources that may be expended is not considered to be a private benefit but dependent upon the facts of the particular case. Advocating for a constituent’s private interest and/or preparation work to present the issue to the government agency is prohibited. A private benefit does not include the fact that a constituent may receive back child support.

Representative Gardner and Senator Bunde both support the current version of the opinion.

Jane Alberts, staff to Senator Bunde, testified before the committee and stated the opinion is much better defined than the previous one. She personally did not have a problem with the 10 hour limit. However, other offices felt the number of hours was dependent on location within the state, where the actual legislative office is located, for instance in the same building as children services and the complexity of the request.

Jeanne Ostness, staff to Representative Johnson, also agreed the opinion is much better. She did not like the 10 hour limit.

Senator Stevens questioned the sentence on page 5, “The Act does not prohibit a legislative aide from performing these activities on personal time.” Senator Stevens moved to remove this sentence. He feels the committee is saying they should do this on their own time. Senator Bunde does not have a problem with an employee performing these services on their own time. Ms. Anderson provided background information. There have been times when legislative employees have called to ask if this type of activity is permissible on their own time. Senator Stevens withdrew the amendment.

Roll call vote taken: Yeas; all committee members voted in favor of the opinion. Motion carried.

9. ADVISORY OPINION 08-04 Close Economic Association; requested by Representative Kurt Olson and Representative Lindsey Holmes.

Mr. Wayne pointed out this opinion addresses a specific request and is very narrow. He stated the request asks whether a close economic association disclosure is required when a legislator or legislative employee stays at another legislator’s or legislative employee’s

residence for a few nights. Mr. Wayne indicated that if the stay were to be more than a few nights, it is possible a close economic association may be required. Senator Bunde asked about the \$250 limit. Mr. Wayne indicated that the \$250 limit does not factor into this opinion.

Senator Bunde moved the acceptance of the opinion. Mr. Wayne pointed out the footnote on page 3 and felt the committee should review it before voting. Member Thomas stated footnote 3 appears to be open ended. What is the period of time in relation to “substantially longer”? He believes footnote 3 creates an appearance of impropriety but isn’t it really a gift. Mr. Wayne pointed out the duration of hospitality is not expressly limited by the Act as mentioned on page 3. Member Thomas suggested the sentence read as “ A period of free lodging ~~substantially~~ longer than one you have described could be of concern to the committee *in that is might not be considered hospitality and subject to the exception.*” Discussion held by committee members. Member Thomas made a friendly amendment to have footnote 3 read as follows: “A period of free lodging ~~substantially~~ longer than one you have described could be of concern to the committee. Roll call vote taken: Yeas; Sen Stevens, Sen Bunde, Rep Roses, Members Thomas, Cook, Turner, Rabinowitz and Chair Walker. Nays: Rep Gardner.

Member Cook asked for clarification if the opinion states this person is a friend or personal acquaintance. Rep Gardner asked about a lobbyist in this scenario. Mr. Wayne said the opinion is limited to a legislator or legislative employee staying at the home. The substance of the opinion only deals with a “close economic association” and not any other issue.

Rep Gardner asked if staying at a lobbyist’s home is considered hospitality. Mr. Wayne and Ms. Anderson responded to the question. If a legislator stays at a lobbyist’s residence, they must pay for the lodging. Lodging is considered a gift under AS 24.60.080.

Senator Stevens asked if residence is defined. Ms. Anderson stated a previous advisory opinion defines residence as the primary residence and not a secondary residence, boat, or other places to stay.

Roll call vote taken: Yeas; all members voted in favor of the opinion. Opinion passed.

10. ADVISORY OPINION 08-05 USE OF STATE FACILITIES; requested by the Committee

Removed from the agenda and will be placed on the next committee meeting agenda.

11. RULES OF PROCEDURE, 14(D), COMPLAINT, WAIVER OF CONFIDENTIALITY

Chair Walker explained Mr. Cole, our legal counsel, is recommending the committee develop a waiver of confidentiality form in regard to the complaint process, AS 24.60.170. In Mr. Cole’s legal opinion of May 21, 2008, he explains the difference between an

“express” waiver and an “implied” waiver. AS 24.60.170 is silent on whether the release of confidentiality applies to both implied and express waivers of confidentiality.

An express waiver requires a form authorizing release of confidentiality while an implied waiver consists of actions or a course of conduct that evidences an intention to waive the right to confidentiality.

The process also needs to be added to the committee’s Rules of Procedure. Section 14 (d)(1), Complaints, has been changed to add language covering an express waiver and implied waiver. Chair Walker asked if there were any questions. Hearing none, Representative Roses made a motion to approve the recommended changes to our Rules of Procedure. Hearing no objection, motion approved.

Chair Walker, asked for comment on the Waiver of Confidentiality form. Rep Gardner asked why the form needed to be notarized. Ms. Anderson indicated Mr. Cole said it could go either way. Rep Gardner made a motion to approve the form without the notary requirement. Hearing no object, motion carried.

Member Turner asked if the form could be faxed in. Ms. Anderson indicated because of the importance of the waiver, an original should be received. The form could be hand delivered or mailed. If mailed, a phone call will be made to confirm the waiver.

12 OTHER BUSINESS: None.

13. ADJOURN: Senator Stevens made a motion to adjourn at 10:55 a.m.