

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from February 7, 2006 FULL COMMITTEE MEETING State Capitol, 2nd Floor, Butrovich Room

1. Call the Meeting to Order: The meeting was called to order at 11:07 a.m. by Vice Chair, Herman G. Walker Jr. Members present: H. Conner Thomas, Chair (on teleconference), Senator Hollis French, Representative Bruce Weyhrauch (joined the meeting at 1:30 p.m.), Representative Max Gruenberg, Skip Cook, Herman G. Walker Jr, Ann Rabinowitz and Marianne Stillner. Member absent: Senator Ben Stevens. Staff present: Joyce Anderson, and Daniel Wayne from LAA Legal. (Note: Chair Thomas asked Vice Chair Walker to chair the meeting today since he was on teleconference.) Also present was Lindsey Holmes, ethics committee nominee.

2. Approval of Agenda: Senator French made a motion to approve the agenda. Hearing no objection, agenda approved.

3. Public Comment: None.

4. Status of SB 187, Legislative Ethics: On hold pending length of meeting.

5. ADVISORY OPINION 06-01 May a legislator or legislative employee, on a regular basis, receive personal mail at the Capitol building through a ‘change of address’ form?

Dan Wayne, LAA Legal Counsel, went over the facts of the request. He obtained additional information from Pam Varni, LAA Executive Director, Jan Price, Procurement Officer and Supervisor of Supply and the Mailroom, and Skiff Lobaugh, Human Resources Manager. He also referenced the memo issued by ethics staff on October 3, 2005.

Mr. Wayne stated the advisory opinion concludes the submission of a “change of address” card to the U.S. Post Office is unethical because the receipt of mail is more than occasional and infrequent as allowed by AS 24.60.030. De minimis use of the capitol mailroom for receipt of the occasional and infrequent piece of personal mail is not unethical.

Ms. Varni related her concerns about volumes of personal mail being delivered to the Capitol mailroom. She pointed out security has changed since September 11th. All pieces

of mail are now scanned when they are received which adds time to processing mail. 'Accountable mail' which is mail sent express or insured must be signed for. She also advised the committee if legislative staff is allowed to receive their personal mail at the Capitol then all legislative affairs agency staff must also be allowed to receive their mail at the Capitol as well. This could result in 400 individuals receiving their personal mail at the Capitol. Staffing levels and space are not adequate to accommodate this additional influx of mail. Presently legislators receive their mail outside of the chambers in slots which are in a public area. The slots are small and there may not be room for a large influx of legislative staff personal mail. Ms. Varni stated another concern is mail forwarded to a state address cannot, at a later date, be forwarded to a personal address pursuant to postal regulations. The Capitol mailroom would continue to receive personal mail for employees no longer on the state payroll unless the individual personally notified all parties with a change of address. Receipt of legislators mail has been very nominal and has not been a problem. She noted it is very difficult to determine if mail for a legislator is work-related or personal and gave a few examples.

Senator French asked Ms. Varni how much personal mail is being delivered to legislative staff at present. Jan Price responded some personal mail is being delivered to the Capitol. At the beginning of session, the mailroom is lenient since staff is trying to get settled in Juneau. Mailroom staff also help make arrangements and offer suggestions on how to work out the mail issue. Ms. Price indicated the one time letter or package delivered to the Capitol has not been problematic.

Senator French agrees de minimis appears to mean the occasional personal letter or package. Member Rabinowitz asked Ms. Varni how many additional staff would be needed to accommodate all personal mail. Ms. Varni indicated one or possibly two depending on the volume and if the mailroom had to move to the Goldstein building.

Representative Gruenberg asked if legislative offices could pick up their own mail. Ms. Price indicated this has been suggested in the past and has not been embraced by all legislators. Legislative staff does not always have time to make the trip to the mailroom. Representative Gruenberg suggested the ethics committee look at this issue from all aspects and not just a mailroom view.

Tim Benintendi, staff to Representative Samuels, gave the committee a historical perspective of the issue. In 1993, there was a shift in leadership; the Republicans came into power. The Rules chair of the house and senate in order to manage their budget changed the policy regarding receipt of personal mail at the Capitol. The change was both a political and managerial move. Mr. Benintendi reported one staff person was devoted to processing personal staff mail at the Capitol. Many staff has their mail forwarded to the Capitol through the use of the forwarding process – the yellow sticker placed on all forwarded mail. He stated the majority of parcels delivered to the Capitol were from Lands End, Spiegel, and JC Whitney car parts. Staff was given 90 days to implement the change. Also, each staffer was allowed one parcel a month and handwritten cards, etc. Mr. Benintendi was staff to the Rules chair in both the houses over a period of five years and

did not hear of any problems after the change. He feels the problems talked about today with mail delivery are temporary.

Vice Chair Walker asked Mr. Benintendi what was his personal position on this issue. He thinks the current policy works fine of allowing the occasional letter and package works fine. Representative Gruenberg feels mail is just as important as parking and use of the gym. Mr. Benintendi stated the Capitol post office is not the U.S. Post Office and the purpose of the Capitol post office is to process legislative business.

Vice Chair Walker asked Mr. Wayne to explain 'de minimis' and 'benefit' in regard to the use of the telephone and fax machine as stated in AS 24.60.030 and why this is different from staff mail being delivered to the Capitol mailroom. Mr. Wayne explained there are eleven exceptions to the use of state resources. These exceptions are not considered a 'benefit' as defined in AS 24.60.990. These eleven exceptions are determined to be de minimis use of state resources.

Vice Chair Walker asked Richard Hahn, who was on teleconference at the Kenai LIO, to testify at this time. He provided written comments concerning SB 187, Legislative Ethics. Vice Chair Walker indicated this item was tabled and his comments would be distributed to committee members.

Chair Thomas went off line at 11:55 a.m.

Brian Hove, staff to Senator Seekins, stated he has his personal mail forwarded to a post office box in the Federal Building. Occasionally he has a package delivered to the Capitol and would be concerned if this practice was not allowed. He could not justify having all personal mail delivered to the Capitol. He feels the issue is a 95-5 issue. With 5% of the staff wanting all personal mail delivered to the Capitol and 95% satisfied with the current system.

Senator French stated he believes the committee and LAA would go along with the practice of occasional mail being delivered to the Capitol.

The committee recessed at 12:05 p.m. Vice Chair Walker called the committee back to order at 1:32 p.m. Representative Weyhrauch joined the meeting.

Sue Wright, staff to Representative Chenault, testified before the committee. She stated some of her mail has taken 30 days to be forwarded to her. She believes prohibiting personal mail delivery to the Capitol would be unenforceable. How do you make a determination of whether the mail is for personal or legislative business? She closed her testimony by saying occasional mail should be permitted.

Deneen Tuck, staff to Representative Gruenberg, reported she had problems with getting mail in Juneau when she first arrived. She is a first time legislative employee. Her mail

was sent back to Anchorage from Juneau and then resent back to Juneau. Some mail had taken as long as 30 days before she received it. She suggested a 30-day leeway for staff mail to be accepted at the Capitol, especially for new staffers.

Vice Chair Walker asked Mr. Wayne to further expound on the term 'benefit' under AS 24.60.990. Mr. Wayne read the definition of benefit and indicated receiving personal mail at the Capitol could possibly be considered as receiving a personal benefit. However, this concept is not supported by any legal basis. He stated AS 24.60.030(a)(1) talks specifically about accepting a benefit other than official compensation. This section of the code was not included in the draft opinion. However, AS 24.60.030(a)(2) is relevant and talks about the use of government resources for a nonlegislative purpose or for the private benefit of a legislator or legislative employee. If you wanted to narrowly apply the definition of benefit, you could say a legislative employee would be using public facilities and funds when receiving mail at the Capitol. Another section, AS 24.60.030(a)(4), directly relates to asking other people to do things for your personal benefit, such as processing your mail. This type of activity is prohibited.

Mr. Wayne further talked about the terms 'unusual and infrequent situation' in this section of the code. Perhaps at a stretch you could say the legislative session is an unusual and infrequent situation; however, the session is not unusual for the legislature but the norm. It may be unusual for the executive branch of government. The prerequisite of 'unusual and infrequent' must also include the requirement that the person's services be reasonably necessary to permit the legislative employee to perform official duties. Mr. Wayne stated the receipt of personal mail at the Capitol is not reasonably necessary to permit the performance of official job duties. This also requires the personal service to be nominal in cost or reimbursed to the state.

Representative Weyhrauch stated if a legislator or legislative employee were not able to receive an occasional piece of mail at the Capitol building, the intent could create all kinds of other scenarios which could be possible violations of the ethics code. He mentioned several examples of frequently accepting a cup of coffee from another legislator and emails from family. Mr. Wayne pointed out the request was not for occasional use but daily use. He believes these types of scenarios were considered when the code was drafted because there are eleven exceptions mentioned. Representative Weyhrauch stated these scenarios could happen daily. Vice Chair Walker pointed out the impact of the actions must affect legislative process and the legislative budget. These are the factors to look at when de minimis is considered.

Representative Gruenberg asked if all the exceptions needed to be listed in the statute. He believes the Capitol is the only place where mail cannot be accepted. He has not heard of this restriction in private business. Member Cook stated his law firm does not accept personal mail for employees except for the occasional package.

Vice Chair Walker asked Mr. Wayne if legislative employees were offered the opportunity to have all personal mail delivered to the Capitol would this practice then open the door for

all 400 LAA employees. Mr. Wayne said the opportunity would have to be offered across the board.

Senator French reminded the committee the issue at hand is whether all personal mail should be forwarded to the Capitol mailroom and asked the committee to define de minimis.

Senator French made a motion to adopt the opinion and add to the Conclusion section after the sentence ending in 'unethical': "De minimis means 2-3 pieces of personal mail per week or less." Representative Weyhrauch objected to the motion. He made an amendment to the motion to delete the entire opinion except for "De minimis use of the capitol mailroom for receipt by legislators or legislative employees of occasional and infrequent personal mail is not unethical. De minimis means 2-3 pieces of personal mail per week or less."

Member Cook pointed out the request for the opinion only addresses legislative employees personal mail and not legislators' personal mail. Legislators will be deleted from the draft opinion.

Senator French called for a point of order. The amendment must be voted on first and then the original motion.

Senator French believes a two-line opinion is a mistake. The opinion needs to include a discussion which shows the balancing act between public dollars and legislative employees residing at the Capitol for five months. Member Cook said a two-line opinion does not answer the question asked of the committee. He agrees there needs to be a balance between the use of state resources and convenience for legislative employees. Vice Chair Walker agreed with the two previous speakers about the amendment. He would like to allow the status quo to continue.

Representative Weyhrauch withdrew his motion to amend the original motion. He would however like to work with the drafter on the opinion and rewrite it in a more streamlined manner.

Representative Gruenberg stated he expected there would be many more staff at the meeting to testify than present here today. He directed the committee to the petition signed by 35 legislative staff and a letter written by Juli Lucky, staff to Representative Hawker. The petition and letter asked the committee to allow personal mail to be delivered to the Capitol. Picking up personal mail at the U.S. Post Office takes time away from work duties. Representative Gruenberg would like to see legislative employees be allowed to receive more than 2-3 pieces of mail per week.

The original motion to adopt the opinion stands. Hearing no objection, motion adopted. Representative Weyhrauch will work on redrafting the opinion to make it cleaner. The redrafted opinion will be forwarded to committee members for approval.

6. Committee Rules of Procedure: Tabled until the next meeting.

Other: Representative Gruenberg thanked Marianne Stillner for her service on the committee. She is stepping down after one term. Vice Chair Walker thanked Marianne on behalf of the entire committee and staff.

Vice Chair Walker introduced Lindsey Holmes as the nominee for the committee. She gave a brief resume of her background and experience. She is awaiting confirmation by the House and Senate.

7. Adjourn: Member Cook made a motion to adjourn the meeting at 2:46 p.m.