

Alaska State Legislature

Select Committee on Legislative Ethics

HOUSE SUBCOMMITTEE

In re: **Representative Jerry Sanders**

DECISION: H 96-02

The House Subcommittee of the Select Committee on Legislative Ethics (Committee) finds that Representative Jerry Sanders violated the Ethics Act by using state funds, legislative staff, state equipment and state facilities for nongovernmental purposes, including political purposes. The Committee reached this decision based on clear and convincing evidence and did not find it necessary to make inferences from those witnesses who exercised the privilege against self-incrimination.

In this decision, the Committee sets out the procedural history of the complaint, the reasons for its determination, including a review of the evidence presented at the public hearing held November 14th and 15th 1996, and recommendations to the House of Representatives for sanctions to be imposed on Representative Sanders.

A. Procedural History

A complaint was filed with the Committee against Rep. Sanders on April 19, 1996. Following the requirements of AS 24.60.170, the Committee determined that the complaint was in the proper form and contained allegations, which if true, would constitute violations of the Ethics Act, and issued a resolution defining the scope of investigation into the complaint on July 24, 1996. An investigation was conducted. After reviewing the results of the investigation, on September 23, 1996, the Committee found probable cause to believe Rep. Sanders had committed violations of the Ethics Act that might require sanctions instead of, or in addition to, corrective action and therefore issued formal charges.

Rep. Sanders was served with the charges but did not choose to answer them. Therefore the Committee scheduled a hearing on the charges for November 14th and 15th, 1996. The Committee appointed Michael N. White as its Hearing Officer to address pre-hearing issues and preside over the hearing. On October 28, 1996, Rep. Sanders sought relief in Superior Court in Anchorage on several pre-hearing issues. His case was dismissed because the Superior Court found it did not have jurisdiction over the internal affairs of the Legislature.

The Committee held a public hearing on the charges on November 14th and 15th, 1996. Members of the Committee present (Rep. Cynthia Toohey and the public members: Joseph Donahue, Ed Granger, Margie Mac Neille, Shirley McCoy and Edith Vorderstrasse) heard testimony presented by the Committee's counsel Michael Spaan and staff. Rep. Sander's attorney, Lester Syren, cross-examined Committee witnesses but elected not to present any witnesses. At the conclusion of the public hearing, the Committee began its deliberations, using only the evidence admitted during the hearing. After determining that violations had occurred, the Committee reviewed the public record of pleadings and correspondence which had been received after the probable cause determination.

Rep. Sanders, a member of his staff and an ex-employee claimed their 5th Amendment right not to testify in response to numerous questions at the hearing.¹ Although the Committee is permitted, as a matter of law, to draw inferences from their doing so, it did not do so in making its findings or reaching its decision. Unfortunately, the witnesses' exercise of their privilege may have deprived the committee of information which could have explained, or made less serious, the violations which the evidence presented demonstrated. The Committee regrets that it has never heard Rep. Sanders' side of the story, although he has been given every opportunity to tell it. However, the Committee must deal with the evidence before it. The Committee will not be referring this matter to any other authority under AS 24.60.170(1).

B. Reasons for determination

The Committee finds, as alleged in **Charge I** of the formal charges,

That Rep. Sanders used public funds, facilities, equipment, services or another government asset or resource for a non-governmental purpose or for his own private benefit or the benefit of another person by producing or mailing, to one or more people, a letter dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(a)(2).

On January 29, 1996, the Republican Party of Alaska held a Presidential Straw Poll. (Testimony of Linda McKay) People participating in the straw poll in District 19, Rep. Sanders' district, wrote their names and addresses on sign-in forms. (Ex. 5)

Earnest Woods, who attended the Republican Straw Poll for District 19, subsequently received a letter. (Ex. 6) The letter is on the letterhead of Rep. Jerry Sanders, which indicates he serves as Chairman of the Economic Development Committee of the Alaska State Legislature. includes the seal of the state of Alaska and is marked "Official Business". The letter is dated March

¹ They declined to testify on the advice of their attorney on the grounds that their testimony might subject them to criminal prosecution.

4, 1996; its envelope bears the return address "Representative Jerry Sanders, State Capitol, Room 13, Juneau, Alaska 99801-1182" and a Juneau postmark of March 5, 1996. The letter is signed "Jerry". Under the typed signature line, "Representative Jerry Sanders", the initials "JS:jl" appear. (Testimony of Earnest Woods, Exs. 5 & 6)

The text for this letter and a mailing list containing 265 names corresponding to names on the District 19 Republican Straw Poll sign-in forms were found, under the file names "strawpoll" and "poll", in a computer located in Rep. Sanders' office and used by his employee, Jeanne Lovell. File information from that computer shows that one document was last modified on March 4, 1996 at 10:38 am and the other was last modified at 10:43 am that day. (Exs. 11 and 12)

March 4th, 1996 was a Monday during the legislative session and it was not a holiday. Rep. Sanders' office employees during the legislative session included Jeanne Lovell and Patricia Perez. (Exs. 8 & 9) Ms. Lovell's time cards for the period indicate that she did not file any leave slips for March 4th or 5th (or any at all for the period from January 29th through March 5th.) (Ex. 7) Ms. Perez did not recall doing any project that wasn't "with the job". (Testimony of Patricia Perez) Ms. Perez told the Committee's investigator, Susan Barnett, that she printed out, folded and mailed the March 4 letter to Republican Straw Poll participants, assisting Jeanne Lovell in the project. (Testimony of Susan Barnett, Ex. 15) The Committee determined that the tasks related to the letter were completed while the employees were on government time.

On March 5, 1996, \$76.48 was charged to the Juneau Mailroom Account maintained for Rep. Sanders by Legislative Services, reflecting the mailing of 239 pieces of mail. (Ex. 10) That account was funded by transfers, of \$100 on January 16, 1996 and \$250 on March 7, 1996, from Rep. Sanders' "accountable" office account. (Ex. 4) Legislators receive an office allowance of \$6000 per year from the Legislature. They may choose to take this allowance in cash, after payroll and income tax deductions, or they may leave it on account with the Legislative Affairs Agency. If they choose this option, they may only submit for payment business-related expenses, substantiated by receipts. No taxes are paid on money disbursed under this account. (Exs. 1 & 3). Rep. Sanders chose the "accountable" office allowance plan. (Ex. 4) The Committee determined that funds held in the "accountable" office account are public funds, not to be used for personal purposes.

The Committee finds that there is clear and convincing evidence Rep. Sanders sent this letter as part of a mass mailing on March 5th. It was on his stationary, prepared and mailed from his office by his employees, and its signature matches the signature on his office allowance form. (Ex. 4) The Committee finds that the act of preparing and sending the letter used public funds (the accountable office allowance) for postage; used public facilities and equipment (the state computer in his office) and used public resources (the staff time of his employees).

The text of the letter is as follows :

I would like to take this opportunity to thank you for your participation in the first presidential straw poll to be held in Alaska. Not only have we broken new ground historically, politically we have gained prestige on the national level.

It was exciting to learn that District 19's participation was among the strongest areas to go out and cast a vote for a presidential candidate. With the inclement weather to deal with, I really appreciate the interest shown by my fellow Republicans.

Seeing a lot of you in the halls of the polling station within my district was indeed a pleasure. If I didn't get a chance to talk with you, please accept my apology.

I have always held in high regard those people who will go that "extra mile" to do what is needed. Taking the time out of your busy schedule to fulfill your civic duty is greatly appreciated.

The Committee finds, by clear and convincing evidence, that this letter does not have a legislative purpose. It concerns a function of a political party on a national level, the effort to influence the choice of the Republican nominee for President. It was sent to active members of Rep. Sanders' political party, in his district, in a year he was running for election. Legislators may use public funds, facilities and staff to communicate with constituents if that communication has a connection to a legislative purpose. This letter has a political, not a legislative purpose. The Committee finds that Rep. Sanders' use of public funds, facilities and equipment and staff time was for a nongovernmental purpose, and for his private benefit (campaign good will) and for the benefit of another person (the Republican Party). Under AS 24.60.030(a)(2), any one of these purposes is a violation.

AS 24.60.030(a)(2)(A) does not prohibit limited use of public funds, facilities and equipment or resources for personal purposes if the use does not interfere with the performance of public duties and the cost or value related to the use is nominal. The Committee finds that this exception does not apply in this case. Ms. Perez told Ms. Barnett that she and Ms. Lovell worked on the production and mailing of the letter for about a day, with other legislative duties being done in between. (Testimony of Ms. Barnett. Ex. 15). Ms. Donna Daniels, a skilled legal secretary, recreated the letter and a mailing list from the District 19 sign-in forms, printed them, folded them, stuffed them in envelopes and ran them through a postage meter in 6 1/2 hours. (Testimony of Donna Daniels) Unless Rep. Sanders' employees had no public duties to perform (an assumption the Committee is unwilling to make), the tasks related to the letter interfered by necessity with their public duties for that period. The Committee finds the cost of producing the mass mailing is not nominal.

The Committee finds, as alleged in **Charge II**,

That Rep. Sanders used or authorized the use of state funds, facilities, equipment, services or another governmental asset or resource for the purpose of political fundraising or campaigning by producing and mailing, to one or more people, a letter dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(a)(5).

Under Charge I above, the Committee has already found that Rep. Sanders used state funds, facilities and equipment, and resources (staff time) to produce the letter dated March 4th. Under this section of the Ethics Act, the issue is whether the letter was for the purpose of political fundraising or campaigning. The Committee, by clear and convincing evidence, finds that the letter was not for political fundraising but that it was for the purpose of political campaigning, for the Republican Party generally and Rep. Sanders individually. (Ex. 6)

Under AS 24.60.030(5), just as under AS 24.60.030(a)(2), limited use of state property and resources for personal purposes is permitted if the use does not interfere with the performance of public duties and the cost is nominal. As in Charge I, the Committee finds this exception does not apply.

The Committee finds, as alleged in **Charge III**,

That Rep. Sanders required an employee to assist in political party or candidate activities, campaigning or fundraising while on government time, by requiring a legislative employee to perform duties related to the production and mailing of a letter, to one or more people, dated March 4, 1996 concerning participation in the Republican Party's presidential straw poll, in violation of AS 24.60.030(b).

The Committee finds, by clear and convincing evidence, that Rep. Sanders did so violate AS 24.60.030(b). Rep. Sanders' initials and signature appear on the letter Mr. Woods received, indicating that he generated the letter. It is highly improbable to the Committee that the mass mailing took place without his directing his employees to carry it out. Legislators are responsible for the activities of their employees while the employees are on government time. As discussed in Charge II above, the letter constituted a political party activity and campaigning (but not fundraising).

C. Cooperation of Representative Sanders

Under AS 24.60.170(k), the Committee's decision following a public hearing may indicate whether the subject cooperated with the Committee in its proceedings. Rep. Sanders did not cooperate with the Committee in this case. In several areas, Rep. Sanders' view of the applicable law is different than that

of the committee's, specifically whether the judicial branch of state government has jurisdiction over the Ethics Committee and whether one person can claim the 5th Amendment privilege against self-incrimination to avoid testimony that might incriminate another person. A subject does not have to agree with the Committee to be considered cooperative, and the committee does not hold these differences of opinion against Rep. Sanders. However, these issues aside, the Committee finds, upon reviewing the pleadings and correspondence in the case since the probable cause determination, a pattern of delaying and obstructing tactics (including lack of compliance with the Hearing Officer's orders) which constitutes a lack of cooperation which was inappropriate.

D. Recommended Sanctions

Since the Committee has found both violations of the Ethics Act and a lack of cooperation by the subject, it must recommend to the House the sanctions it deems appropriate. In making these recommendations the Committee considered several factors.

First, the offenses must be looked at in light of the spectrum of possible violations. A considerable amount of legislative staff time, \$76 in postage, and the official state letterhead were used for partisan political purposes. Although significant, the offenses are not the most serious.

Second, the Committee has found probable cause to believe that Rep. Sanders violated the Ethics Act twice before and has required corrective action. Although the second offense was minor, both violations involved using state resources for personal or political benefit. It does not appear that the corrective actions required by the Committee in the past have had the desired positive effect on Rep. Sanders' conduct in this area.

Third, state resources are entrusted to the legislators for their use in performing their legislative functions. The public has the right to expect that these resources will not be diverted to other purposes. Public trust in the legislature depends on the assurance that a legislator will not use these resources in partisan efforts or for personal benefit.

The Committee and the Legislature must take a strong stand when misuse of public resources occurs. The Committee has increased the sanctions recommended because of the prior findings of probable cause that Rep. Sanders violated the Ethics Act and because of his lack of cooperation.

The sanctions recommended by the Committee for imposition by the House are:

1. Rep. Sanders shall be stripped of any committee chairmanships he may hold for his next term. Being a committee chair places additional state

resources at a legislator's disposal and the use of committee resources in this violation has demonstrated that Rep. Sanders cannot use those resources appropriately.

2. Rep. Sanders shall be required to choose the "non-accountable" option for office accounts, receiving his \$6000 office allowance in cash, net of appropriate taxes. Under the legislature's rules, he may then use the money as he wishes, avoiding any future issues of inappropriate claims of legislative business expense against an office account.

3. Rep. Sanders shall reimburse the Legislative Affairs Agency for the \$76.48 postage and 8 hours compensation for one Range 21 Step A employee. (\$207.44) This is obviously not an exact equivalent of the labor cost of Rep. Sanders' employees' work on the letter, but it is intended to represent that cost.

4. Rep. Sanders shall make a public apology to the members of the House and the public on the floor of the house during session for his misuse of state assets. The apology shall be full and complete and must include accepting responsibility before the legislature for actions taken in his office, even if he wishes to avoid directly saying he participated in order to protect his 5th Amendment right against self-incrimination. The Committee believes that legislators as a group properly use the public resources entrusted to them and comply with the requirements of the Ethics Act. Actions like Rep. Sanders' reflect poorly on the other legislators who act responsibly.

5. Rep. Sanders shall adopt, file with the Committee and post in his office a written policy for his employees on the use of government time for government functions, requiring the use of leave time, properly documented, for personal, political or other nongovernmental activities.

6. Rep. Sanders shall complete corrective actions called for in earlier Committee decisions, specifically, attending Ethics training with his staff.

7. Rep. Sanders shall not be allowed to use legislative funds for out-of-state travel during his next term.

Recommendations 2,3,4,5 and 6 are to be completed within 20 days of the date sanctions are imposed by the House.

Adopted on the 15th day of November, 1996



Margie Mac Neille, Chair
House Subcommittee
Select Committee on Legislative Ethics

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REPORT OF THE RULES COMMITTEE ON
IN RE SANDERS (H 96-02)

REPORT OF THE
RULES COMMITTEE
REGARDING THE SELECT COMMITTEE ON
LEGISLATIVE ETHICS'
DECISION H 96-02

February 5, 1997

Juneau, Alaska

I

BACKGROUND

On April 19, 1996, a complaint was filed with the Select Committee on Legislative Ethics concerning Representative Jerry Sanders. The Committee determined that it was in proper form and contained allegations which, if true, articulate violations of the Ethics Act. Thereafter, on July 24, 1996, the Committee issued a resolution defining the scope of its investigation against Representative Sanders.

On September 23, 1996, the Committee found probable cause to believe Representative Sanders violated the Ethics Act and issued formal charges, alleging violations of AS 24.60.030(a)(2), AS 24.60.030(a)(5), and AS 24.60.030(b). Representative Sanders was served with a copy of the charges, along with a Summons requiring him to file an Answer within 10 days. Representative Sanders elected to not file an Answer.

The Committee held public hearings concerning Representative Sanders' case on November 14, 1996 and November 15, 1996. Mr. Michael White was the Hearing Officer, and the Committee was represented by counsel. Representative Sanders was represented by Mr. Lester Syren. Representative Sanders appeared telephonically, but on numerous occasions, when asked about the details of the case, asserted his rights under the Fifth Amendment.

On November 15, 1996, the Committee issued a formal written opinion, finding that Representative Sanders violated the aforementioned sections of the Ethics Act and recommending a total of seven sanctions.

II

THE ETHICS COMMITTEE'S FACTUAL FINDINGS

The Ethics Committee's findings of fact may be summarized as follows: On January 29, 1996, the Republican Party conducted a Presidential Straw Poll in Alaska. Subsequently, Representative Sanders sent a letter to approximately 239 constituents who had participated in the poll.

The letter in question stated as follows:

I would like to take this opportunity to thank you for your participation in the first presidential straw poll to be held in Alaska. Not only have we broken new ground historically, politically we have gained prestige on the national level.

It was exciting to learn that District 19's participation was among the strongest areas to go out and cast a vote for a presidential candidate. With the inclement weather to deal with, I really appreciate the interest shown by my fellow Republicans.

Seeing a lot of you in the halls of the polling station within my district was indeed a pleasure. If I didn't get a chance to talk with you, please accept my apology.

I have always held in high regard those people who will go that "extra mile" to do what is needed. Taking the time out of your busy schedule to fulfill your civic duty is greatly appreciated.

The mailing was made with the assistance of Representative Sanders' staff and required \$76.48 in postage, which was charged to his Juneau Mailroom Account. This account was funded by transfers from Representative Sanders' accountable office account. As stated in its written decision: "The Committee finds that the act of preparing and sending the letter used public funds (the accountable office allowance) for postage; used public facilities and equipment (the state

computer in his office) and used public resources (the staff time of his employees)."

III

THE ETHICS COMMITTEE'S CONCLUSION OF LAW

With respect to Count 1, the Committee found as follows:

The Committee finds, by clear and convincing evidence, that this letter does not have a legislative purpose. It concerns a function of a political party on a national level, the effort to influence the choice of the Republican nominee for President. It was sent to active members of Rep. Sanders' political party, in his district, in a year he was running for election. Legislators may use public funds, facilities and staff to communicate with constituents if that communication has a connection to a legislative purpose. This letter has a political, not a legislative purpose. The Committee finds that Rep. Sanders' use of public funds, facilities and equipment and staff time was for a nongovernmental purpose, and for his private benefit (campaign good will) and for the benefit of another person (the Republican Party). Under AS 24.60.030(a)(2), any one of these purposes is a violation." (emphasis in original).

With respect to Count 2, the Committee found that, although the letter was not for the purpose of political fundraising, it was for the purpose of political campaigning. Accordingly, the Committee determined that AS 24.60.030(a)(5) was violated.

With respect to Count 3, the Committee determined that Representative Sanders required his staff to perform duties related to producing and mailing the letter, which it found was a political party or campaign activity. The Ethics Committee therefore concluded that Representative Sanders violated AS 24.60.030(b).

IV

THE ETHICS COMMITTEE'S RECOMMENDATIONS

Having determined that Representative Sanders was guilty of violating AS 24.60.030(a)(2), AS 24.60.030(a)(5), and AS 24.60.030(b), the Ethics Committee then determined that Representative Sanders had not been cooperative and considered the issue of sanctions. With respect to the issue of whether or not Representative Sanders cooperated, the Ethics Committee stated:

"...[T]he Committee finds, upon reviewing the pleadings and correspondence in the case since the probable cause determination, a pattern of delaying and obstructing tactics (including lack of compliance with the Hearing Officers' orders) which constitutes a lack of cooperation which was inappropriate."

The recommended sanctions are summarized as follows:

- (1) That Representative Sanders be stripped of any committee chair positions he may hold; and
- (2) That he be required to elect a "non-accountable" option for his office account; and
- (3) That he be required to reimburse LAA \$76.48 in postage and 8 hours compensation for a Range 21 employee (\$207.44); and
- (4) That he be required to make a full, complete, and public apology on the floor of the House; and
- (5) That he adopt and file in his office a written policy for his employees concerning the use of government time; and
- (6) That he attend ethics training with his staff; and
- (7) That he be restricted from using legislative funds for out-of-state travel.

V

THE RULES COMMITTEE'S FINDINGS OF FACT

The House Rules Committee concurs with the Ethics Committee's factual findings in a number of respects. Specifically, the Rules Committee finds as follows: First, on January 29, 1996, the Republican Party held a presidential Straw Poll in Alaska. Second, on March 5, 1996, Representative Sanders caused a letter to be sent to approximately 239 people in his House District who participated in the Straw Poll. Third, this letter was on Representative Sanders' letterhead and was marked "official business". Fourth, the letter was prepared in Representative Sanders' legislative office in Juneau with the assistance of his legislative staff during normal working hours. Fifth, the content of the letter is as set forth above. Sixth, the mailing utilized postage charged to Representative Sanders' postage account at the Capitol Building, which account was funded by transfers from Representative Sanders' accountable office account. Seventh, the actual cost of postage for this mailing was \$76.48.

In addition to the above findings of fact, the Rules Committee, *after having had the advantage of hearing Representative Sanders' testimony first hand*, makes the following findings of fact: First, on all relevant dates, Representative Sanders was not a declared candidate for reelection. Second, on all relevant dates, Representative Sanders had not commenced normal and usual campaign or election related activities. Third, on all relevant dates, Representative Sanders had not decided whether or not to stand for reelection. Fourth, the letter in question was not intended by Representative Sanders as a campaign tool or as a mechanism for personal benefit, or for the benefit of any other person. Fifth, the letter in question was motivated by a desire to complement his constituents for participating in the public process, as well as a desire to encourage future participation in the public process.

VI
RULES COMMITTEE CONCLUSIONS OF LAW

A
Count 1

Count 1 alleges a violation of AS 24.60.030(a)(2), which states, in relevant part, as follows:

"A legislator or legislative employee may not...(2) use public funds, facilities, equipment, services, or another government asset or resource for a nongovernmental purpose or for the private benefit of either the legislator, legislative employee, or another person..."

A strict and literal reading of this statute indicates that a prima facie case for violating AS 24.60.030(a)(2) includes the following elements:

1. The alleged perpetrator must be a legislator or legislative employee; and
2. There must be the use of public funds, facilities, equipment, services, or another government asset; and
3. There must be:
 - a. A nongovernmental purpose; or
 - b. Private benefit of the alleged perpetrator or another person.

All three elements must be satisfied by clear and convincing evidence before the statute is violated.

In this case, there is no question that elements 1 and 2 are satisfied by clear and convincing evidence. The third element, however, is much more problematic. As indicated above, it can be satisfied in one of two ways---if there is a nongovernmental purpose, or if there is private benefit of either the actor or another. Each of these alternatives will be examined in turn. What complicates analysis is the utter lack of definitions for such key terms as "nongovernmental" and "benefit".

Was there a nongovernmental purpose? The word "purpose", in this context, is synonymous with "intent" or "motive". In the opinion of the Rules Committee, and it so finds, there is insufficient evidence from which it can be concluded that there was a nongovernmental purpose. As indicated above, the Rules Committee found that the purpose of the letter, and Representative Sanders' motive, was to honor and encourage participation in the public process. This is a governmental purpose and is entirely proper.

The Ethics Committee characterized the letter as having a political and not a legislative purpose. It based this conclusion on several facts: First, it concerned the activities of a political party. Second, it was sent to active members of Representative Sanders' political party. Third, it was sent to people in his district in an election year. With all due respect, the Rules Committee draws a different conclusion with respect to Representative Sanders' purpose, or motive.

As admitted by counsel for the Ethics Committee in his final argument at the conclusion of Representative Sanders' ethics hearing:

"Representative Sanders was given every opportunity to tell his side, to tell us what happened, why he sent that letter, what was his intent, what was the official or the legitimate legislative purpose to send that letter? You're going to have to infer that now, because I can't tell you what his purpose was, what was in his mind and he wouldn't tell you and his staff wouldn't tell you, so you're going to have to draw the inferences from the evidence or the lack of the evidence... (emphasis added)

And when you review the evidence, look at the exhibits. Look at Exhibit 6, that's the letter. That's the letter. Read that letter and say, what's the legitimate State purpose for that letter."

Thus, the Ethics Committee had no direct evidence concerning Representative Sanders' motive in sending the letter. It was limited to the inferences that could be drawn from the letter

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itself. While it was entirely permissible for the Ethics Committee to draw inferences from the letter, its ability to assess motive was not enhanced by any direct evidence. The Rules Committee was not similarly handicapped, and consequently, as previously discussed, the Rules Committee found that Representative Sanders' motive was to advance a governmental purpose. Accordingly, the Rules Committee specifically finds that Representative Sanders did not violate AS 24.60.030(a)(2) by having a nongovernmental purpose in sending the letters.

The Ethics Committee also found that AS 24.60.030(a)(2) was violated because Representative Sanders realized a private benefit, which it characterized as "campaign good will". The Rules Committee rejects this conclusion. As indicated, Representative Sanders, at the time in question, was not a declared candidate, was not engaging in normal campaign activities, and had not even decided whether he was going to run in the next election. There was no campaign to which "good will" could attach.

The Rules Committee notes that "good will" is to be expected when legislators do a good job. To avoid good will, legislators would have to shun their responsibilities and neglect their constituents. Good will is, quite simply, a normal byproduct of the conscientious discharge of our duties, the very duties that were entrusted to us by our constituents. Furthermore, discharging these duties oftentimes requires a significant expenditure of public resources, well outside the statutory exceptions pertaining to nominal investments.

The Rules Committee rejects any construction of AS 24.60.030(a)(2) which equates the private "benefit" of legislators to "good will". If we can not do our jobs; if we can not help our constituents; and, if we can not uphold the trust that was placed in us for fear that we might incur some "good will", we might as well fold up our tents and go home. Such a construction of the statute yields ludicrous results. It therefore follows that the Rules Committee

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wholly rejects the Ethics Committee's conclusion that AS 24.60.030(a)(2) was violated on the theory that Representative Sanders' letter generated campaign good will, or any other type of good will.

The Ethics Committee also found that Representative Sanders' letter violated AS 24.60.030(a)(2) because it was for the private benefit of a third person, the Republican Party. The Ethics Committee's decision on this issue was articulated summarily, without an adequate specification of its rational or the specific benefit flowing to the Republican Party. The Rules Committee rejects this conclusion. After having examined the evidence, it does not find from even a preponderance of evidence, let alone by clear and convincing evidence, that the Republican Party realized any benefit from the letter.

In summary, with respect to Count 1, the Rules Committee finds that Representative Sanders acted with a governmental purpose, that he did not realize a private benefit, and that no private party realized a benefit. Therefore, Representative Sanders did not violate AS 24.60.030(b)(2).

B Count 2

In Count 11, the Ethics Committee determined that Representative Sanders' violated AS 24.60.030(a)(5). This statute reads as follows:

"A legislator or legislative employee may not... (5) use or authorize the use of state funds, facilities, equipment, services or another government asset or resource for the purpose of political fund raising or campaigning..."

The Ethics Committee determined that Representative Sanders' letter constituted the use of state resources for the purpose of campaigning, in violation of the statute. The Rules Committee does not agree. As noted, Representative Sanders had not yet commenced

his campaign. Also, as noted, his purpose was to encourage participation in the public process. Specifically, he was not motivated by a desire to advance his then nonexistent personal campaign, nor that of the Republican Party. He did not act with that purpose, and thus, Representative Sanders did not violate AS 24.60.030(a)(5).

C
Count 3

The Ethics Committee found, by clear and convincing evidence, that Representative Sanders violated AS 24.60.030(b) by requiring his staff to participate in political party activities and campaigning. AS 24.60.030(b) states:

"A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection."

Again, the Rules Committee disagrees. The letter in question was not campaigning, and it was not a political party activity. It was an effort by Representative Sanders to encourage participation in the public process. Representative Sanders did not violate AS 24.60.030(b).

VII
RULES COMMITTEE'S RECOMMENDED SANCTIONS
WITH RESPECT TO ALLEGED VIOLATIONS CONTAINED
IN COUNTS 1, 2, AND 3

Having determined that Representative Sanders did not violate the statutes he was formally charged with violating, there is no occasion for the imposition of sanctions with respect to those charges.

VIII

RULES COMMITTEE'S CONCLUSION REGARDING
REPRESENTATIVE SANDERS' COOPERATION WITH THE
ETHICS COMMITTEE

AS 24.60.170(k) provides, in relevant part, as follows:

Following the hearing, the committee shall issue a decision stating whether or not the subject of the complaint violated this chapter, and explaining the reasons for the determination. The committee's decision may also indicate whether the subject cooperated with the committee in its proceedings. If the committee finds a violation, or lack of cooperation by the subject, the decision shall recommend what sanctions, if any, the committee believes are appropriate." (emphasis added)

The Rules Committee construes this statute as creating an independent legal duty to cooperate with the Ethics Committee, the violation of which may be grounds for the imposition of sanctions, regardless of the disposition of the original charges. The Ethics Committee determined that Representative Sanders did not cooperate with it. The Rules Committee concurs with that assessment. Accordingly, appropriate sanctions may, but need not, be assessed for failure to cooperate.

In articulating this conclusion, the Rules Committee is troubled by the lack of statutory guidance as to what constitutes a lack of cooperation. In that regard it must be emphasized that it is not the Rules Committee's position that mounting a vigorous defense constitutes a lack of cooperation. Similarly, representation by counsel and good faith procedural or evidentiary tactics do not constitute a violation of this statutory duty. In addition, the good faith exercise of constitutional rights may not be construed as a "lack of cooperation".

IX

RULES COMMITTEE'S RECOMMENDATIONS
REGARDING APPROPRIATE SANCTIONS

The Rules Committee makes the following observations: First, the sanctions recommended by the Ethics Committee, for the most part, were predicated upon a finding that Representative Sanders improperly used state money and resources to improperly benefit himself or for improper purposes; and, the sanctions were specifically tailored to punish this specific type of offense and to act as a prophylactic measure to ward off future violations of this type. Second, those specific offenses are no longer relevant to determining proper sanctions. Third, any assessment of sanctions must specifically pertain to the violation actually committed by Representative Sanders--a failure to cooperate with the Ethics Committee. That is to say, there must be a logical nexus between the offense of failure to cooperate and the sanction or sanctions assessed by the House against Representative Sanders. Fourth, taking into consideration Representative Sanders' beliefs about the weaknesses of the Ethics Committee and the Ethics Code, as well as the natural pressures and concerns generated by all political campaigns, the Rules Committee understands, *but does not excuse or condone*, Representative Sanders' actions with respect to the Committee. Finally, sanctions may properly relate to the twin goals of deterring Representative Sanders from failing to cooperate with the Ethics Committee in the future, as well as deterring others from committing this violation. With these considerations in mind, the Rules Committee makes the following recommendations to the full House concerning sanctioning Representative Sanders for failure to cooperate.

- (1) It is recommended that the Ethics Committee's recommendations concerning sanctions not be adopted. As noted, they relate to three alleged violations which did not occur.
- (2) Representative Sanders should be ordered to pay a \$1,000 fine to LAA before the end of the current legislative session; and

- (3) Representative Sanders should not be permitted to travel out of Alaska utilizing state funds during the 1997 calendar year; and
- (4) Representative Sanders should be ordered to utilize the nonaccountable office account procedure; and
- (5) Representative Sanders should be ordered to attend ethics training if he has not already done so; and
- (6) Representative Sanders should be ordered to post a copy of the Ethics Act in his legislative offices.

X

CONCLUSION

The Ethics Committee recommends that Representative Sanders be sanctioned as discussed in the previous section. In addition, it must be noted that, although the Rules Committee disagrees with the conclusions reached by the Ethics Committee, this disagreement is based on factual and legal considerations. This opinion is not based upon a finding that any member of the Ethics Committee acted other than honorably. The Rules Committee had the benefit of evidence not before the Ethics Committee, and its disagreement concerning the law is just that, an intellectual disagreement, which is something which occurs in courts thousands of times a day among honorable people. Nevertheless, the Rules Committee does disagree with the Ethics Committee's findings and recommendations and respectfully urges the full House to act consistent with the recommendations contained herein.

Finally, it may be noted that, during the course of reviewing In Re Sanders, H 96-02, the Rules Committee identified a number of troublesome issues concerning the Ethics Act. The Rules Committee determined that resolution of these issues is outside the scope of the task assigned to it. However, the Rules Committee also concluded that it would be remiss if it failed to inform the full House of its concerns. Accordingly, attached hereto is a short document outlining

areas which the Committee believes warrant study. It is recommended that this document be forwarded to an appropriate body for consideration.

Dated this 4th day of February, 1997 in Juneau, Alaska.

Signing Do Pass:

- Representative Kott, Chair
- Representative Phillips
- Representative Porter
- Representative Vezey
- Representative Williams

Signing Do Not Pass:

- Representative Elton
- Representative Nicholia

RULES COMMITTEE'S CONCERNS REGARDING THE ETHICS ACT

The Rules Committee, in evaluating the Ethics Committee's recommendations in In Re Sanders, H 96-02, identified a number of issues concerning the Ethics Act which it concluded warrant additional study. As stated in the body of its written recommendations to the full House regarding In Re Sanders, the Rules Committee does not purport to resolve these very difficult and complex issues, but rather seeks to apprise the full House of its concerns. It is recommended that this matter be referred to an appropriate body for further action. With that in mind, the issues are as follows:

1. Are key terms in the Act sufficiently defined?
2. Does a lack of definitions make it difficult for people governed by the Act to know what conduct is prohibited? If so, is the Act subject to challenge on Due Process grounds?
3. Does a lack of definition of "cooperated with the committee" act to chill the right to mount a full, vigorous, and robust defense to charges?
4. Generally does a lack of definitions make the act so vague as to chill the right to freedom of speech?
5. Is the Act so broad as to sweep within its coverage speech which is constitutionally protected?
6. At ethics hearings, should the Committee be required to call as witnesses those individuals who file ethics complaints?
7. Constitutional considerations aside, is the Act good public policy?
 - (a) Does it prohibit conduct which properly may be performed by legislators?

- (b) Are there sufficient safeguards in place as to encourage confidence that the Ethics Committee will generate fair and unbiased decisions?
- (c) Are there adequate provisions to guard against actual conflicts of interest?
- (d) Should the Act contain additional provisions to foster public and legislative confidence in the process by guarding against the appearance of impropriety?
- (e) Should normal rules of procedure and evidence govern proceedings before the Ethics Committee?
- (f) At the Ethics Committee level, should there be more of a separation of the traditional functions of the police, prosecutor, judge, and jury? Alternatively, is fairness and due process guaranteed through legislative review of the decisions of the Ethics Committee?
- (g) Is the Ethics Committee too vulnerable to being used as a political football, and if so, should there be some sort of moratorium on the acceptance of complaints during defined periods before elections?
- (8) Such recommendations and concerns as the Ethics Committee has or may articulate.