

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from October 28, 2013 FULL COMMITTEE MEETING Anchorage LIO, Conference Room 220

1. **CALL THE MEETING TO ORDER:** Committee Chair H. Conner Thomas called the meeting to order at 8:40 a.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Chris Tuck, Janie Leask, Dennis “Skip” Cook, and Gary Turner. Staff present: Joyce Anderson. Teleconference: Dan Wayne, LAA Legal and Rep Paul Seaton. Absent: Representative Charisse Millett, Senator Anna Fairclough, Herman G. Walker, Jr.

Public member Janie Leask was introduced to the committee by the Chair. Chair Thomas stated that Ms. Leask was initially an alternate member and recently became a regular member when Toni Mallott resigned from the committee. Ms. Leask stated that she was a life-long Alaskan, whose father was from Metlakatla, Alaska. She has lived in Anchorage since 1959, and worked for Alaska Federation of Natives for 15 years, serving seven of them as president. Her career continued with the National Bank of Alaska and Alyeska Pipeline Service Company, ultimately working for First Alaskans Institute, a statewide, non-profit dealing with Alaska native public policy issues and leadership development. She retired in 2010, and recently moved to Homer. Ms. Leask comes from a very competitive family and is still involved in sports and plays hockey. She strongly believes in public service and supporting those in public office.

2. **APPROVAL OF AGENDA:** Approved with no objections.
3. **APPROVAL OF MINUTES:**
 - a. **August 21, 2013 Full Committee** – Mr. Wayne referred members to page 7 of the minutes, and third paragraph down, stating that although he did not recollect exactly what he said at the meeting, he would like to make a motion to revise the first sentence. Chair Thomas asked Mr. Wayne to recommend a modification. Mr. Wayne suggested the following:

“Mr. Wayne commented that he thought that the statute was easier to interpret and less confusing because it doesn’t contain exceptions or limitations.”

Member Cook made a motion to approve the August 21, 2013, minutes as corrected. No objections. Motion passes.

- b. **August 21, 2013 House Subcommittee** – Representative Tuck motioned to approve. No objections. Motion passes.
- c. **March 12, 2013 Full Committee** – Member Turner motioned to approve. No objections. Motion passes.
- d. **March 26, 2013 Full Committee** - Member Cook motioned to approve. No objections. Motion passes.

4. **PUBLIC COMMENT:** None.

5. **CHAIR/STAFF REPORT:**

- a. Informal Advice Staff Report – Ms. Anderson referred members to the Log Totals report that was just handed out. She noted the report is emailed to committee members on a monthly basis and therefore is no longer being provided in the committee packets. Ms. Anderson stated that although she tends to receive more phone calls during an election year, she has received more than usually during this interim. The calls focus on campaign issues and redistricting; specifically, what is allowed and what is not allowed.
- b. 2013 Online Ethics Training – Ms. Anderson reported the training video became available on September 9, 2013. As of October 23, twenty- three people have taken the training online. The training video consists of four segments and is approximately 3 hours long. The first three segments are designed for employees who do not directly work for legislators. The fourth segment is specifically for staff who directly work for a legislator. The segment addresses newsletters, campaigning, constituent services, and a few other topics. Those who are not required to view Segment 4 have the option to view it or skip it.

Senator Gardner asked if it was still Ms. Anderson’s recommendation that legislators attend the “in-person” training versus taking the online training. Ms. Anderson replied yes. Senator Gardner asked if the online training was available to anybody. Ms. Anderson replied that anyone could view the video by logging on with his/her legislative user name and password, adding that perhaps she should mention that in the next newsletter. Ms. Anderson reported to the committee that a legislator terminated an employee for stating that s/he had completed training when s/he had not. The legislator discovered that the employee had not completed training when the Ethics office contacted the legislator to find out why the employee had not taken the training after two email notification from this office.

Member Cook asked if the Ethics office had an electronic record of those who complete training. Ms. Anderson answered yes. Ms. Anderson stated that the legislator who fired his/her employee suggested that legislators should receive notification of when their employee has completed training. Ms. Anderson stated if the committee agreed to the suggestion, she would work with Media Services in accomplishing it. Members agreed to the suggestion.

Representative Tuck asked if legislators of other states could view the online training. Ms. Anderson stated yes, and explained a “guest” sign in is available upon contacting the Ethics office.

- c. Ethics Disclosures – Ms. Anderson referred members to the handout reflecting the number of ethics disclosures and categories filed between January 1 and September 30, 2013. A total of 474 disclosures were filed with the majority being Gift of Travel and/or Hospitality disclosures.

Member Leask asked how the numbers compared to last year. Ms. Anderson replied that she would have to get back to Ms. Leask for an answer.

- d. Office Move – Ms. Anderson reported the Ethics office is scheduled to move to a temporary office on G Street on Monday and Tuesday next week. Ethics is not moving in with the other legislative offices and the LIO in the McKinley Building because Ethics needs a secure location. The office space is slightly larger than the current space; three rooms instead of two. Information Services is working on a computer hook ups and phone issues are being addressed. Phone calls will be set up to be forwarded to our new phones. Additionally everything in the Ethics office is being moved to G Street. Legislative offices will have items placed into storage since the temporary offices are very small. Adjustments will have to be made as the Ethics office will not have a mailroom or supply room. Extra office supplies will be brought over with the move. When the new building is finished, the Ethics office will move into the same location on the second floor. The Anchor Pub, next door to the current LIO, will also be a part of the new legislative building. A request for new furniture will be submitted. The temporary Ethics office will be set up with used, surplus furniture, as needed. Since there are two desks at the temporary location, we will be utilizing them and not taking our existing desks there. It is anticipated the new offices will have new furniture as well. Senator Gardner added that the furniture is not coming out of our budget because it belongs to the Legislature.

Member Leask asked where the November 21 House Subcommittee meeting will be held. Ms. Anderson stated she was unsure. It may be at the temporary LIO location or held in the front office of the temporary Ethics office location. Ms. Anderson additionally stated the meeting will

be in Executive Session and the teleconference aspect of gaveling in and then adjourning will need to be determined.

- e. Facebook Update – Ms. Anderson stated that Ethics does not have access to Facebook, which makes it difficult to answer questions from legislators. Legislative Council has a meeting scheduled on Wednesday, October 30, 2013, where it is expected the council will be making a final decision on who will or will not have Facebook access. Ms. Anderson stated she would be providing testimony and asked if any of the members wanted her to say something on behalf of the committee.

Senator Gardner commented that she did not see why all the fuss. She did not understand the reason for the hesitation of allowing the use of Facebook in the office; most of the offices have iPads. If you cannot get it on your computer, then you use your iPad. Statutes already exist regarding the use of state resources for campaigning, and legislators are responsible for ensuring that staff is making full use of their time.

Representative Tuck stated that upon hiring, employers are looking at Facebook in determining whether or not they want to hire the applicant. There have been some national labor relations decisions about Facebook as well as a Supreme Court case on First Amendment Rights addressing the use of Facebook in this regard. Employers are using it to determine people's employability. However, this practice has been shot down and an employer can no longer use Facebook for this purpose. Rep Tuck said he was aware of one Legislative department that wanted to be able to utilize Facebook for employment opportunities. Ms. Anderson interjected that it was the Ombudsman's office. Rep Tuck also stated that some legislators had expressed concern about people accessing their personal FB pages and wasting time. Rep Tuck agreed with Sen Gardner in that legislators are responsible for the productivity of their staff; whether it's on their cell phone or using the state phone for personal calls. He agreed that it was important for the Ethics office to have FB access for purposes of monitoring and for keeping informed of what's going on. Rep Tuck stated that although he was not very active on his FB page, he was surprised of how many people contacted him through it, which has increased his activity responding to messages. If not for this reason, the Ethics Committee should have access to it. People are using it more and more; it's easier to locate an email address and use FB to send someone an email from that resource.

Ms. Anderson stated that it was her understanding that a person could have a Facebook account without having a Facebook page and asked members if this was correct. Member Janie Leask replied that she has been using Facebook for several years and that in order for people to access your page, you would have to accept their invitation to allow them this access. Member Leask agreed that it would be beneficial for the committee to have FB access.

Chair Thomas stated it appears there is no opposition to Ms. Anderson taking a position at Legislative Council's meeting and stating the Ethics Office would like to have an account.

6. **BUDGET - FY 14 Update:** Chair Thomas stated that budget totals were included in the packet and referred members to Ms. Anderson if there were any questions.
7. **Revisit ADVISORY OPINION 12-04, Use of State Resources – Campaigning: Limiting the use of links to an Internet website created or maintained with legislative resources -** Chair Thomas invited Representative Seaton (via teleconference) to re-state his position and asked if he was asking the committee to revise the opinion or to clarify it.

Representative Seaton referred members to the first page in the packet, (AO 84-04 (An excerpt from the opinion--related to the binding interpretation of an opinion), paragraph 4: "Frequently the letter of the law will remain static, while the social circumstances which existed at the time the opinion was enacted have changed". He stated that he felt this statement applied to today's opinion with regard to links provided on a web page. He explained that during campaigning, when discussing a bill with someone, providing the bill itself is difficult for most people, as they are often lengthy and complicated. The sponsor's statement of that bill is often referenced instead as it lays out the parameters of the bill and offers information in an easy and understandable format. The sponsor statement is located on the House Majority and House Minority web page. The statements are not maintained in BASIS. Representative Seaton continued to restate his testimony that he provided at the Ethics Committee meeting that was held on February 26, 2013. (See documents in today's packet of testimony from minutes and prior documentation provided by Rep Seaton.) Representative Seaton stated that providing a link to the House/Senate websites on campaign materials should not be prohibited, as it would allow constituents easy access to information, especially if providing the link verbally is already allowed while a legislator is campaigning. He additionally noted the fact of who managed which web pages, which changes from a political website to a non-political website, and vice versa; either the Legislative Affairs Agency or the house/senate majority/minority.

Chair Thomas asked Rep Seaton if providing a link to BASIS on his campaign page would be sufficient. Representative Seaton stated that a link to BASIS is not direct enough as it still requires constituents to search through several clicks to get to the exact site. He would like a direct link to the sponsor statement.

Chair Thomas commented that the issue at hand is less about who manages or maintains the sites than including legislative contact information in a political setting or on material. Senator Gardner agreed with Chair Thomas' comment. The fact of the matter before them today was not about the quickest, easiest way to provide information while campaigning; rather, it is about assessing the fairness for a challenger who does not have access to what the serving legislator

has access. Senator Gardner suggested copying the sponsor's statement page, cleansing it from all legislative contact information and posting it directly on the campaign website. Senator Gardner stated this is what she has done in the past and used it for campaign letterhead and carried it with her when campaign door knocking. Senator Gardner pointed out that challengers do not have access to the caucus websites, which are often partisan. They are still a state resource that you would be directing constituents to during your campaigning. Senator Gardner stated she is in favor of maintaining the existing opinion.

Ms. Anderson suggested that the committee clarify what they have said in the opinion. She referred members to the top of page 2 of the opinion, that says, "If, as part of a political election campaign communication, a serving legislator's political campaign were to publish an address or electronic link to an Internet website created or maintained with legislative resources, and that Internet website displayed contact information for the legislator's legislative office, then for the purposes of the Legislative Ethics Act it would be as if the campaign had listed the legislative contact information on a campaign advertising flyer."

Ms. Anderson stated that when she reads this sentence, she sees two parts. It's saying that there has to be displayed legislative contact information and that if a legislator's going to provide a link to BASIS, or provide a link to the Majority and Minority web pages, that is *not* a direct link to legislative contact information. Perhaps this sentence needs to be clarified in the opinion, not necessarily changed.

Chair Thomas invited Dan Wayne to the discussion. Mr. Wayne addressed the Chair and committee stating that the paragraph Ms. Anderson referenced appears to be specifically talking about contact information, and the listing of contact information on a campaign-advertising flyer as was discussed in AO 07-07. He stated the paragraph does not actually say whether or not linking to some other kind of website that lists, for example, caucus information, is prohibited under the reasoning in AO 07-07. The opinion is making a point about contact information. Elsewhere the opinion discusses what would be applicable to the Majority and Minority websites. He suggested that if the committee wanted a specific exception for the Majority and Minority website, just add that to the opinion.

Chair Thomas asked if the Majority/Minority websites already contained legislators' contact information. Members answered yes, and Ms. Anderson stated that there is a link that will eventually lead the person to each legislator's web page with their contact information. However, the person has to navigate through it to find the information. It may take two or three clicks.

Senator Gardner stated the bottom line during a campaign is that a challenger does not have the benefit of a state paid place that has all of the opponents' legislative work summarized or accessible. What the committee is trying to do today in part is have a "firewall" to make sure the benefits or advantages an incumbent has don't make it unfair to the challenger.

Member Cook felt strongly on the fairness to the challenger. However, is it also unfair for a legislator who has been serving for many years to be prohibited from talking about his/her career on his/her campaign materials. Yet, the challenger who had an illustrious career is able to talk at length about career highlights.

In response to Member Cook's comment, Sen Gardner indicated an incumbent could talk about career highlights by taking the work and cleansing it of legislative contact information and putting it on the campaign website. It may be an extra step for the legislator, but that's what campaigning is all about.

No motion was made to change the Advisory Opinion. The committee proceeded with Item #8.

8. **ADVISORY OPINION 13-04, Use of State Resources – Does the Act and AO 12-02 allow for an exception to conduct fundraising activities for foster youth, wards of the State? Requested by Representative Les Gara**
Representative Gara distributed a handout noting AS 47.10.080(f), A child found to be a child in need of aid is a ward of the state.

Chair Thomas invited Representative Gara to the floor. Representative Gara began by thanking Ms. Anderson for working with him. He stated he was about 80% of where he wanted to be on his effort in getting laptops to foster children. Representative Gara stated that presently he is allowed to solicit used laptops for a non-profit and money for laptops to be purchased by a non-profit. His office stores them and then transports them to Facing Foster Care in Alaska (FFCA), a non-profit. Their office is located in an OCS location and is run by one part time person who works full time at the University. Volunteers in the community fix the computers, get them in working condition, and cleanse them of whatever is on them. The Alaska Office of Children's Services matches the laptops with the foster youths. Representative Gara stated he would like his office to transport the non-working computers to the volunteers or computer shop where the computers are repaired; an activity which is presently prohibited under AO 12-02. He stated that he believes according to AO 12-02, this service does not have a legislative purpose. A legislative office is allowed to do certain things for non-profits, such as receive items for non-profits or solicit for non-profits.

AS 47.10.080 states that foster youth are wards of the state and are people to which the state has an obligation. He believes that helping foster youth by obtaining laptops for them has a legislative purpose. Advisory Opinion 12-02 is based on the premise that helping foster youth does not have a legislative purpose. Rep Gara provided the committee with foster care statistics and challenges that foster youth face. He asked members to consider AS 47.10.080 and realize that helping foster youth has a legislative purpose.

Rep Gara stated that this request to allow his office to perform this service will require more time than "de minimis" time, which is currently stipulated in AO 12-02. Rep Gara indicated he would not send his staff to transport the computers if they have other legislative work to perform. In the summer, work is lighter which

would allow staff time to perform this service, unlike the winter when they are in Juneau.

Senator Gardner asked Rep Gara if foster youth who age out of the system and transition into independent living are still technically wards of the state. She also asked if it makes a difference if the non-profit was a “registered” non-profit or not. Rep Gara responded that youth under 21 who are still in foster care are considered wards of the state. Foster youth in the independent program can lose the state’s funding or they can continue to receive the state’s support up to age 23. In response to Sen Gardner’s second question, Rep Gara stated he believed if FFCA was not registered as a non-profit they would still be able to help foster youth but he didn’t know the answer for certain.

Rep Tuck stated because foster youth are wards of the state, helping them has a legislative purpose and FFCA is assisting the legislature in doing that, rather than the legislature assisting FFCA in performing activities. He further explained that this was something we would like to see happen for our foster youth. He stated FFCA is not the one who is benefiting, rather we are the ones benefiting and they are assisting us. Rep Tuck posed the question that if FFCA didn’t exist, wouldn’t we still have a computer/laptop program duty to get laptops to OCS and get them repaired? FFCA is taking on the duty and fixing the computers for us and assisting us.

Member Leask thanked Rep Tuck for stating his view because she was struggling with the fact the State of Alaska has the responsibility to foster care youth. She posed the question; what is that level for the State of Alaska versus a legislator? She agreed with what Rep Gara was doing but asked if it was permitted or are we taking that leap to where any legislator that wanted to could take on such a project. Is there a delineation to where you have the State of Alaska OCS but now going to a different level? Is that ok? Are we going to the level of an individual legislator versus the State of Alaska?

Chair Conner stated Member Leask had a legitimate question and if the members go down that road, they may want to request a legal opinion before moving forward.

Member Cook stated that although he is in favor of helping foster kids, the question here is: Does a legislator, just because s/he can say something has a legislative purpose, have the right to go out and organize a campaign to promote that legislative purpose? The committee issued AO 12-02 because a legislator determined education had a legislative purpose and therefore was allowed to solicit monetary donations to advance that cause. No one can argue that this activity doesn’t have a legislative purpose; but does that mean that a legislator is allowed to use their office, state resources, and staff to organize and support a particular non-profit to do that? Foster children are wards of the state, but the purpose of the legislature is make laws that benefit the citizens of the state, including foster youth and to appropriate funds to enhance those goals. The legislature has undertaken this goals via means of a budget for OCS. Why isn’t OCS

providing laptops? The Executive Branch is responsible for implementing laws that the legislature passes. It's up to them to take care of foster youth, wards of the state. That's not to say individual legislators cannot support foster youth, or a particular project for foster youth, or be a part of a non-profit organization supporting foster youth on their own time. However, if these activities are permitted in legislative offices with the use of state resources, we are using unappropriated resources instead of appropriating funds to get it done. It's not to say that the cause is not for a good purpose. It's also not to say that the state isn't responsible.

Chair Thomas asked members if there were any other questions for Rep Gara. Seeing none, he invited Dan Wayne to explain the draft opinion and provide any additional input he may have.

Mr. Wayne stated he wrote AO 13-04 so that it could be applied in a general way that would be useful as a guideline for legislators who are connected with any charity. He pointed out that in AS 24.60.030(a)(2) there are three prohibitions with two that were most applicable. The AO does not focus on the terms "legislative purpose" or "non-legislative purpose." Neither are defined in the Legislative Ethics Act. Rather, he focused on use of government assets or resources for the private benefit of a person. If AO 13-04 were adopted as written, the AO wouldn't prohibit a legislator or legislative employee from volunteering their own time to do any amount of work they wanted for a charity. However, when it comes to using legislative resources and assets, including the time of legislative staff, the limited use exception would apply. The committee would determine whether or not an activity was allowable within that limited use exception on a case-by-case basis which leaves the limited use exception open ended. Footnote 6 has examples of past opinions where the committee has tried to say what is permitted or prohibited within that limited use exception. (AO 04-01, AO 06-01, and AO 13-03.)

Mr. Wayne stated the term "person" is not defined in the Ethics Act but is defined in Title 1 under general definitions. General definitions apply to all statutes unless there is a particular definition within that statute. In 01.10.060(a)(8), "person" also includes corporations which could relate to a charity.

As far as the question about wards of the state and therefore activity related to wards of the state having a legislative purpose, the prohibition does not apply at all because it's legislative work. Mr. Wayne stated that may be a policy call. He posed the question -- are there other constituencies that would also be considered wards of the state. He referenced prisoners. There are state laws that require the state to provide health care to people in prison. He didn't know if they were categorized as "wards of the state or not," but they're treated as wards of the state when they are in prison. What about a charity providing aid to prisoners. Would the activity be considered a legislative purpose which would allow the expenditure of legislative resources to help the charity from a legislative office. He stated he did not want to diminish the situation that foster kids are in, but the example might not be the only constituency that legislators feel is kind of in the same way—a special relationship with the state.

Rep Tuck asked Mr. Wayne with regards to the definition of a person and what is written on page 5 in the conclusion at the end of the paragraph, is the “person” to which he refers the foster child or FFCA? Mr. Wayne stated he was referring to the charity because under the facts, that’s who’s receiving the benefit. Obviously, the charity passes the benefit on. However, they’re the direct beneficiary of the assistance that they would be getting.

Rep Tuck suggested the opinion be divided between monetary donations and laptop donations. It was his understanding that with monetary donations the charity receives the benefit; but as far as receiving the laptop, it seems logical that the charity is receiving an obligation. They’re doing the additional work and then passing that laptop onto foster youth. The charity doesn’t keep that asset. It is not theirs to keep.

Sen Giessel commented on Rep Tuck’s suggestion in that they weren’t talking about laptops. The fundamental question here is the state resource in the form of legislative staff time. Staff is paid wages and it’s public money. That’s really the issue. It’s not whether staff is helping provide laptops, coats, or health care.

Rep Tuck stated that it was brought up earlier that there were two types of purposes of the Legislature. Legislators also have constituent work aside both of those purposes. He stated when someone contacts his office in need of assistance, from pot holes to navigating through our healthcare system, we’re there to assist and aid and help out. We use staff time to assist the person. He believes the same scenario applies to foster youth and laptop computers and falls under his constituent duties. He referenced Mr. Wayne’s statement about prisoners being wards of the state as it is something to be looked at when talking about our ability to assist constituents. He stated a constituent has to be a direct constituent. He stated that he felt that legislators have the obligation to the constituencies of the prisons as well as the constituencies of the foster care. A lot of the legislator’s legislative duties and staff duties fall under constituent work.

Ms. Leask testified that she was having trouble determining whether or not an individual legislator is considered the “state of Alaska,” and would like this clarified. Ms. Leask agreed that the state has a responsibility to the wards of the state and we give resources to them, but where does it say that the state of Alaska is an individual legislator? Ms. Leask stated that if she could get past that hurdle, and know for a fact that legislators have that authority, then the rest of it falls into place and makes sense.

Chair Thomas responded to Ms. Leask’s concern. He stated that it’s been the position of the committee that an individual legislator is not a representative of the entire state for this type of purpose. Although the committee has never asked for a legal opinion, this is something that the committee could consider.

Ms. Leask asked the committee what is the next step in this discussion. Would bypassing that hurdle come first and then the question of laptops and to what

degree legislative staff and state resources could be utilized? Chair Thomas replied the committee would have to look at that issue first if the committee was going to consider what Rep Gara is asking. If the committee adopted the opinion, then the committee would not.

Member Cook stated the committee has long recognized that legislators are involved in constituent activities and the committee has addressed this subject many times. In the past, the committee has placed limits, such as what a staff to a legislator can do. He further stated there are limitations when the matter has progressed to a certain stage such as the hearing stage. The legislator can offer assistance but with limitations. If someone approached a legislator and asked what the process is to become a foster parent, the legislator may help by directing the constituent in the right direction and help the constituent through the bureaucracy to get to the right place; but for the legislator to take on a cause, the committee has had to enforce existing statute limitations.

Rep Tuck stated in response to Ms. Leask's question on whether or not legislators are considered the state, stating that yes, legislators are the state but government is divided up into judicial, executive, and legislative. The question becomes whose responsibility is it of those three branches to be able to perform this type of work? If it's mainly the responsibility of the executive branch, does that exclude any opportunities to get involved by the legislative branch or the judicial branch?

Chair Thomas asked the committee for a motion to either approve the opinion or present a request to Mr. Wayne to address the issue on whether or not this activity has a legislative purpose and therefore not subject to the various, existing restrictions outlined in the opinion.

Rep Gara requested to respond to some of the questions raised by the committee. First, he addressed when is a legislator a representative of the state. Rep Gara explained that there are two roles of a legislator; one being that we promote existing state policy. In this situation, we are working with a state agency that does not have the state resources to give laptops to foster youth. He stated he believed that it was a policy in favor of the state to promote laptops for foster youth. Therefore, he considered the activity to have a legislative purpose. Second, in response to the analogy of prisoners being wards of the state, he stated that we are not guardians of prisons; however, we are legal guardians of foster youth. The executive branch has set this policy, and the legislative branch is allowed to promote it. Another example of promoting a policy of the executive branch is promoting the recruitment of foster care parents. Rep Gara stated that as a legislator, he will be speaking at churches in attempt to recruit foster parents.

Chair Thomas asked Rep Gara if it was his stance that because foster youth are wards of the state, that there should be no limitations in the effort to obtain laptops for them. Rep Gara replied yes. To further back up his statement he pointed out that the state has a policy regarding the matching of laptops with foster youth.

Member Turner (INAUDIBLE) asked how many hours staff would be using to collect the computers, transport them to a repair shop for cleansing, and get them to FFCA? Rep Gara stated again that he would not allow his staff to perform these duties if they had other legislative work to do. He estimated the amount of time staff needed would be approximately two hours a month. Member Turner believed that amount of time would be considered de minimis. Rep Gara stated the de minimis term was very difficult for legislators to understand. If two hours a month were to be made a guideline, then that would work. Member Turner stated that determining a specific time limit for various issues/activities in the past has been a challenging task. Because of the difficulty, the committee has steered away adding percentages and various amounts of time to opinions.

Sen Giessel commented that with regard to some of the global issues that have been brought up in this discussion, legislators were elected for finite areas of our state. Legislators do not represent the state of Alaska unless they are convened. As an example, Sen Giessel mentioned the board of directors of an organization. Individual board members do not represent the board. The board exists only when convened. Additionally, legislators may support any initiative, but to assign staff to promote certain things is not appropriate. Legislators may designate their time because they are salaried. She commented that if she wanted to provide support on homelessness, for example, she would ask her staff if they would like to volunteer time on it, but not during work hours, or paid staff time. Sen Giessel posed the question, what if a staffer was picking up a laptop during regular work hours and was involved in an automobile accident. Who is liable? If they were performing this task during staff time, the state would be considered liable. Sen Giessel commented that this cause should be promoted to the public who have an interest in foster care as well. They are the ones who should be volunteering their time, not legislators, but citizens.

Rep Tuck asked the committee if the legislature has the right to assist the executive branch. If yes, then do they have the ability to utilize staff? Rep Tuck shared a scenario of a recent case on education which was heard in Superior Court. The question was whether or not the state was providing adequate education to rural Alaskans equivalent to urban Alaskans. In the Superior Court decision, it was determined that the executive branch was not responsible for that education; monetary was not the only purpose of providing education; programs are also required. That responsibility landed with the legislature. In the case of today's scenario, who is the defendant? Is it the Department of Education, the Department of Law, or the Legislature's legal department?

Ms. Leask restated her question from her earlier testimony, which was, if it was the Legislature's responsibility, then when does it actually become the responsibility of an individual legislator, if at all.

Member Turner motioned to approve the Advisory Opinion 13-04 as drafted.

A roll call vote was taken: YEAS: Member Cook, Sen Gardner, Sen Giessel, Member Leask, Rep Tuck, Member Turner, Chair Thomas. NAYS: None. ABSENT: Member Walker, Rep Millett. Motion passed.

Members took 10 minute break
Meeting reconvened at 10:45 a.m.

9. RULES OF PROCEDURE – Suggested revisions and updates

a. SECTION 2 Administrative Policies

Ms. Anderson stated that the first proposed change was changing the term “Ethics Code” to “Ethics Act” throughout the Rules of Procedure. AS 24.60 is officially called the Ethics Act via statutory language.

Ms. Anderson proceeded to read aloud the proposed changes. The committee changed the second sentence of Subsection (g)(2) on Page 2 of 14, from: The committee will review proposals at a committee meeting held during the last quarter of the calendar year. The committee may meet at other times as necessary. To: The committee will review the proposals at least on an annual basis. (Deleting the third sentence completely.)

Chair Thomas asked Ms. Anderson to explain the benefit and loans program process to committee members before reading aloud the proposed changes.

Ms. Anderson explained state statute requires that individuals who participate in certain state benefit and loan programs disclose participation because there are no fixed eligibility requirements. They are awarded on a discretionary basis; and because they are awarded on a discretionary basis, the intent of the statute is to prevent any undue influence by the legislature in granting that particular benefit or loan. Therefore, it is disclosed and the committee reviews the benefit and loan programs each year for changes or additions or if they are deleted or moved to another department. Occasionally, a program might be added. The committee reviews major changes such as additions or deletions to the list.

Member Cook motioned to approve and adopt the revisions under SECTION 2. No objection. Motion passed.

b. SECTION 5 Executive Sessions

Ms. Anderson stated this section was a major re-write as it has been confusing and need additional clarification.

Member Turner asked to add to Subsection (c)(2), “upon questioning being completed with that individual that they be asked to depart the session.” Ms. Anderson replied to Member Turner’s suggestion that it was removed but could be added back in under Subsection (b).

Senator Gardner suggested the following language from Subsection (c): “No one other than the Committee’s legal advisor and ethics staff will be allowed in the

executive session for deliberations and voting on the opinion.” Members concurred with reinserting the proposed language.

Member Leask referred members to Subsection (5), and asked if the requester of a confidential advisory opinion can be someone other than a legislator, legislative employee, etc., for example, a spouse or domestic partner of a legislator, who is also covered by the Legislative Ethics Act. Ms. Anderson stated that if a spouse of a legislator wanted to request an advisory opinion, the legislator would be the actual requester.

Senator Gardner motioned to approve and adopt the revisions under SECTION 5. No objections. Motion passed.

c. SECTION 6 Teleconference

Ms. Anderson explained this section contained outdated language that no longer applied such as portable, cellular, and party line.

Member Turner asked the members if under Subsection (c)(4), that 20 days after receiving the decision was the postmark date that it was mailed and if the committee members think it should be more specific. Ms. Anderson recommended that Member Turner’s suggestion be noted in the complaint section versus the teleconference section.

Member Cook suggested a technical correction to Subsection (b). The entire sentence when read through is not a complete sentence. He suggested adding the word “During” in front of the word Discussion; the sentence would begin with the word “During” instead of Discussion.

Member Leask motioned to approve and adopt the revisions for SECTION 6. No objections. Motion passed.

d. SECTION 10 Advisory Opinions

Ms. Anderson pointed out the changes and additions to this section. Additionally, in the first sentence of Subsection (b)(1), the word “both” should be removed.

Member Leask motioned to approve and adopt the revisions under SECTION 10. No objections. Motion passed.

e. SECTION 11 Disclosures

Ms. Anderson pointed out the changes and additions. Member Turner suggested that under Subsection (a), the second sentence should also say that the committee will accept electronic or digital signature.

Members decided to insert “electronic forms” and “electronic signatures” and remove the words “faxed forms” and “faxed signatures”.

Member Cook motioned to approve and adopt the revisions under SECTION 11. No objections. Motion passed.

f. SECTION 13 Potential Complaints

Ms. Anderson pointed out that all of Subsection (a) was one paragraph, as was all of Subsections (b) and (c). She subdivided them for ease in reading and understanding.

Member Turner motioned to approve and adopt the revisions under SECTION 13. No objections. Motion passed.

g. SECTION 14 Complaints

There were no changes. Members proceeded to the next Section.

h. SECTION 17 Complaints - Decisions

Ms. Anderson stated the recommendation made by Member Turner earlier does not apply to this section as she had previously indicated. She stated she would like to follow up with Member Turner's recommendation and address it at the next meeting. The issue to which he was referencing addressed what is considered "receipt" of the complaint decision. Ms. Anderson explained that sometimes it is difficult reaching someone, or not having confirmation that someone has received it for a variety of reasons or circumstances.

On page 14 of 14, Ms. Anderson stated that Subsection (g) of SECTION 17 was added and divided into three major areas. Ms. Anderson point out that (g)(1) states that the committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency (or APOC if it a campaign activity.) Ms. Anderson pointed out that if the complaint involved five separate allegations and only one of them is related to APOC or addresses an activity that is possibly criminal in nature, the agency would only receive the appropriate material. The material may be redacted if necessary to remove other non-applicable information.

Rep Tuck motioned to approve and adopt the revisions under SECTION 17. No objections. Motion passed.

Ms. Anderson commented that September of 2011 was the last time the Rules of Procedures were revised. Member Turner asked the members if the members think they should add how often the Rules of Procedures should be reviewed, for example, every two years, and insert that into them. Members agreed that they would bring the matter up again at the next committee meeting along with the other item Member Turner discussed regarding receipt of a complaint decision.

10. **OTHER BUSINESS:** Ms. Anderson stated the COGEL (Council on Governmental Ethics Laws) Conference is in Quebec this year. Funds are available in the Ethics budget for members to attend, if anyone is interested.
11. **ADJOURN:** Senator Giessel motioned to adjourn the meeting at 11:20 am. No objection.