

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from August 21, 2013 FULL COMMITTEE MEETING Anchorage LIO, Conference Room 550

1. **CALL THE MEETING TO ORDER:** Committee Chair H. Conner Thomas called the meeting to order at 8:35 a.m. Members present: Senator Cathy Giessel, Senator Berta Gardner, Representative Chris Tuck, Antoinette “Toni” Mallott, Herman G. Walker, Jr., Dennis “Skip” Cook, and Gary Turner. Staff present: Joyce Anderson. Dan Wayne, LAA Legal, was present via teleconference. Absent: Representative Charisse Millett.
2. **APPROVAL OF AGENDA:** Approved with no objections.
3. **APPROVAL OF MINUTES:** Chair Thomas stated that the minutes for February 26, 2013 House Subcommittee meeting and February 26, 2013 Joint House and Senate Subcommittee meeting were approved at an earlier time and, therefore, removed from today’s agenda.
 1. **January 16, 2013 Full Committee** – Senator Gardner motioned to approve. No objections. Motion passes.
 2. **February 26, 2013 Full Committee** – Senator Gardner motioned to approve. No objections. Motion passes.
 3. **March 12, 2013 Full Committee** – Senator Gardner motioned to approve. No objections. Motion passes.
 4. **March 26, 2013 Full Committee** - Senator Gardner motioned to approve. No objections. Motion passes.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
 1. **Informal Advice Staff Report** – Ms. Anderson referred members to Log Totals by Reason for the years 2011, 2012, and 2013, noting the difference in number of phone calls; an increase during an election year with fewer phone calls in a non-election year. Ms. Anderson stated that she

has yet to enter January and July entries of 2013 due to recent surgery on her right hand.

2. 2013 Online Ethics Training – Ms. Anderson reported that a training video was in progress. It consists of 4 segments and is approximately 3 hours long. The video can be paused throughout each segment and between each segment. There are questions and answers at the end of each segment. Viewers are unable to go to the next segment until the previous segment is completed. Segments 1-3 are applicable to all legislative employees; Segment 4 is applicable to political staff only; although non-political staff may view this segment if s/he chooses. Employee logins are identified as political or non-political. At the end of Segment 3, the employee will be notified whether Segment 4 is required. Non-political staff will receive a certificate after the completion of Segment 3. Political staff (aka staff to legislators) will not receive a certificate of completion until after the completion of Segment 4. Segment 4 contains information that pertains to staff working for a legislator; i.e., constituent services, newsletters, administrative hearings, etc.

Ms. Anderson stated that she would be requesting that the online training be accessible for outside guest users who are from other states. The Ethics Office will keep track in the number of guests who access it.

Ms. Anderson stated that LAA Media Services has done a wonderful job with the online training video and incorporating a PowerPoint presentation into it. Viewers will see the slide presentation on the screen and also have the option to print the presentation beforehand to follow along. Ms. Anderson speculated that the video would be available online in about a week for those who need ethics training. Some offices have been calling the office to see when it would be available, which is very encouraging. The Ethics office is maintaining a list of those who need training and will inform them when it is available.

Senator Gardner asked Ms. Anderson if it was the committee's preference that everyone who works in the building to take the training in person at the beginning of session, but for those who could not make it to Juneau, or were hired after the fact to take the online training. Ms. Anderson replied to Senator Gardner that that was correct and also stated that she conducts a couple of makeup training sessions before referring anyone to online training.

Representative Tuck asked Ms. Anderson for clarification of "outside users". Ms. Anderson stated that to access online training, you need a legislative user name and password. She would like a guest user name and password for those who are outside of the Legislature. Ms. Anderson stated that she has been contacted by other states requesting to view the

online ethics training. Ms. Anderson stated that she, too, has viewed ethics training from other states for ideas for our online training.

3. Ethics Disclosures – Ms. Anderson referred members to the green sheet in their packet showing a breakdown of ethics disclosures filed between January 1 and June 30, 2013. There have been 330 disclosures filed as of June 30. Ms. Anderson then referred members to a list of disclosures that were filed late, most of which were close economic associations filings. This has prompted the idea of having an “in-service” on filling out disclosure forms, and an in-service specifically on close economic associations. There were a lot of issues on when to file a close economic during the campaign season. There is an advisory opinion on close economic association disclosures, but questions still arise. Ms. Anderson would like to involve those who would likely file a close economic association with the legislators; i.e., web masters and press secretaries to name a few. There are various takes on the start of a close economic association. Letters have not been sent as the outcome of the “in-service” could impact the already late close economic associations filed. It is a complicated issue.

Chair Thomas added to Ms. Anderson’s statement in that it is a complicated issue as it involves two people, each person having a different perception of when the association started. One person may want to file as soon as it is indicated that there will be an association in the future, and the other may not file a disclosure until s/he performs the agreed upon service. It is difficult to determine which person is correct and difficult for us to deal with the different perceptions.

6. **BUDGET:** Chair Thomas stated that it was his observation that there would not have been a lot of left over money from the last fiscal year if we had had a public hearing and it appears we have less money for this year than we had last year. Chair Thomas turned it over to Ms. Anderson. Ms. Anderson stated that the budget status report before them is current as of August 6, 2013. The budget was \$256,400, with a remaining balance of \$24,400. The budget for FY14, which began on July 1, 2013, is \$250, 500, which is less than FY13. Ms. Anderson stated that she agreed with Chair Thomas in that if something were to come up such as a public hearing or some unexpected cost, it is likely we would have to ask the Legislature for additional funds to cover the cost. Member Walker asked for an explanation as to why our budget was cut. Ms. Anderson stated that she did not believe any of the other departments received an increase, but that she would follow up and provide the committee with an explanation for the decrease.

UPDATE: On September 4, 2013, Ms. Anderson provided the committee with an update on the decrease in the FY14 budget.

1. In FY13, and previous years, \$9,000 had been allocated for rental costs associated with our offices at the Anchorage LIO.
2. In FY14, rental costs were removed from our budget. The budget notation is: “Consolidate space costs in Facilities Rent allocation.”

3. Both the Ombudsman and Victims' Rights offices also had a corresponding reduction in their budget.
 4. Rental costs are now allocated in a separate expense code for the entire Legislature.
7. **CONTRACTS:** Chair Thomas summarized that there were three contracts before them that need to be approved by the committee.

Contract with Investigator Andy Klamser: Member Walker motioned to approve the action taken by the House Subcommittee Gary Turner on March 13, 2013, via an email to LAA Accounting Department, to approve payment of all invoices submitted and to amend Mr. Klamser's contract amount from \$9,300 to \$9,350. *(Note: The packet reflects the term of the contract ending April 30, 2012, instead of April 30, 2013. The term dates on contract itself are correct.)*

Senator Gardner asked if the committee was satisfied with Mr. Klamser's work. Members responded yes.

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

Contract with Investigator Monique Rapuzzi: Member Turner motioned to approve an extension of Ms. Rapuzzi's contract through December 31, 2013, with no change in the contract amount of \$5,000. *(NOTE: The packet reflects the extended date of December 31, 2012, instead of December 31, 2013. The date is on the contract itself is correct.)*

Sen Gardner asked why the committee wanted to extend Ms. Rapuzzi's contract. Ms. Anderson explained that there was an ongoing issue and Ms. Rapuzzi would need to be compensated to appear before the upcoming Joint Senate and House Subcommittee meeting. Members spoke favorably of Ms. Rapuzzi's work.

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

Contract with Legal Counsel Brent Cole: Skip Cook motioned to approve to place Mr. Cole on contract to provide legal services to the committee for FY14 for an amount not to exceed \$10,000. Additionally, Mr. Cole's rates will remain the same at \$175 per hour as well as legal assistant work at \$75 per hour.

Mr. Walker asked what would have to happen if the committee needed Mr. Cole's services after session had ended and after Mr. Cole's contract had expired. Ms. Anderson stated that she works with Wen Ibesate in the Executive Director's office and the committee has been able to use Mr. Cole's services, even when the contract has not been approved, because of the fact that it is an on-going contract.

Members commented among each other on Mr. Cole's extremely low rate, discussing whether or not this was a special rate to the committee, and that if it was, it may be because he has an on-going contract with the committee that he would like to maintain.

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

8. **ADVISORY OPINION 13-02, Clarify Membership on a Board of an Organization under AS 24.60.030(f). Requested by the Ethics Committee** – Chair Thomas referred members to the blue sheets in their packets and summarized that the reason for issuing an advisory opinion defining what constitutes a board membership of an organization disclosure was because the Ethics office has received numerous calls on the subject and continues to receive questions on what constitutes a “board”, an organization”, and a “board membership.” None of these terms are defined in statute. The committee is being asked to provide clarity. Documentation on the subject matter is included in the packet, consisting of legal advice provided by Mr. Wayne, informal advice provided by Ms. Anderson, and previous discussion by committee members from the February 26, 2013 minutes.

Chair Thomas invited Mr. Wayne, LAA Legal Counsel, to explain his draft of Advisory Opinion 13-02, dated July 1, 2013.

Mr. Wayne referred members to page 3 of the draft advisory opinion. He stated that because the three terms in question are not specifically defined by the Act, the legislature has left discretion up to the committee to interpret the meaning of the terms in context of the Act. The committee should use a definition that is consistent with common understanding. Because the committee is defining these terms in the context of a disclosure provision, the committee should interpret them reasonably broadly in order to be consistent with the purpose of the disclosure provision which is to encourage disclosure. See bottom of page 3. Mr. Wayne then sites an old opinion, AO 09-05, (at the top of page 4 of AO 13-02) which states, “ethics disclosure requirements are based in part on the principle that certain potential conflicts of interest, once out in the open pose less of a threat to the public's confidence in government than they might if they were not revealed.” This statement is part of the basis for the opinion. The rest of the opinion has to do with arriving at conclusions about the common meaning of these terms. The opinion goes through an explication of dictionary definitions and concludes with defining the terms. If the committee adopts this opinion, or until the legislature provides a different definition of one of the terms, or until the committee changes the definitions in a future opinion, these definitions apply.

Chair Thomas asked Mr. Wayne to go over the definitions of the three terms. Mr. Wayne read aloud the three definitions and stated they were based on definitions from Webster's Collegiate Dictionary.

Member Cook recommended switching the order of the definitions, making the definition of organization first, board of organization second, and board membership third, so that it flowed better.

Representative Tuck asked if board of organization definition applies to a person who has emeritus status, someone who has been a board member and now advises the board but is not voting member or makes decisions. Would this type of status be considered a member of a board of an organization? Rep Tuck further asked if the ability to vote or to make decisions are included in the opinion because advising is one thing and being able to make a final decision is another. Member Walker responded by re-stating the term of board member. The emeritus status still makes you a board member of that organization and you are still participating as an individual. Representative Tuck added that it was his understanding that when you are in emeritus status, you are no longer required to disclose.

Member Walker and Ms. Anderson stated that this term was not in statute. Ms. Anderson asked if Mr. Wayne could repeat and comment on the definition of board of an organization from page 3 which states a board has the power to manage, supervise, investigate, or advise an administrative and functional structure. Mr. Wayne responded that the definition was taken from the dictionary.

Member Tuck stated that he wanted to make the clarification if the committee wanted to limit a disclosure to just voting members of an organization or include board members who only provide advice. He felt this was one of the gray areas that we were finding in a previous case. Chair Thomas stated that it would no longer be gray because the opinion states "advisory".

Member Cook asked if attorneys on contract with the committee would be required to disclose because they are "advising" the committee. Would attorneys also be required to disclose their clientele for which they are attorneys? Member Cook stated that he wondered if the word "advise" fits all. Member Walker asked Member Cook to clarify what he meant by the attorneys disclosing their clients. Member Cook further explained that the "board of an organization" means someone who has the power to advise, such as a business. That is what attorneys do. Would an accountant also be required since s/he advises? Chair Thomas stated that accountants would not be covered by the Act unless the person was a member of the committee. Member Cook replied that in the definition, people are advising these organizations.

Sen Gardner stated that she believed that there is a distinction and referred members to the definition of a "board" at the top of page 3, in that it defines the term as "*a group of persons* having managerial, supervisory, investigator, or advisory powers". She further explained that you (Member Cook) are not part of a group of persons when you advise your clientele. You are not part of their group. You are an outsider coming in, whereas in the example that Rep Tuck was referring to was a long time member who was no longer serving but who was still invited to the meeting of which he was once a member. He is still a part of that group, but in a different capacity.

Chair Thomas asked for feedback from Mr. Wayne. Mr. Wayne replied that if an attorney were hired to give legal advice to a board, the attorney could read AS 24.60.030(f), where it talks about serving on a board and easily screen themselves out. He stated that he did not believe it would be confusing.

Ms. Anderson stated that for the record, since the 90s, this office has excluded disclosure of board membership of religious organizations. However, no actual documentation is available in the office as to why religious organizations were excluded. She wanted to point out that on page 3 of the advisory opinion, paragraph 4, religious organizations will no longer be an exception.

Mr. Wayne commented that he thought that the statute was easier to interrupt and less confusing because it doesn't contain exceptions or limitation. Sen Gardner commented that she felt individuals should be able to keep their religious beliefs private if they wanted to. She provided the following example: you don't have to disclose who you voted for when you vote. The same reasoning may have applied to previous advice in excluding religious organizations.

Member Walker made a motion to approve Advisory Opinion 13-02 with the modifications recommended by Member Cook in switching the order of the definitions so that the definition of "organization" be first, the "board of organization" be second, and the "board membership" be third.

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

9. ADVISORY OPINION 13-03, Does the Act prohibit the use of "Every Door Direct Mailing" for legislative newsletters? Requested by Senator Cathy Giessel –

Chair Thomas stated that Sen Giessel would be excused as a participating committee member due to the fact that she is the requestor of Advisory Opinion 13-03. Chair Thomas stated that Sen Fairclough will join the meeting and serve as alternate committee member.

Sen Giessel stated that there was an error in the packet in that EDDM stood for Every Door Direct Mailing, not Every Day Direct Mailing. The chair stated that that Sen Giessel will be able to provide testimony but not as a member of the committee.

MEMBERS TOOK A BREAK AT 9:25 AM

MEMBERS RESUMED AT 9:30 AM

Chair Thomas brought the meeting to order. Chair Thomas excused Sen Giessel.

Sen Fairclough joined the meeting. Chair Thomas informed members that Ms. Anderson issued an announcement to all legislative offices of today's topic and invited testimony from those interested.

Chair Thomas invited Tito Tungul, Business Solution Specialist with United States Postal Service, to brief members on the new postal service called Every Door Direct Mail (EDDM), a new program designed for businesses.

Mr. Tungul states he works as a Business Solution Specialist for the whole Alaska district. One part of his job is to introduce businesses to new products and services offered by the USPS. Mr. Tungul explained that EDDM was designed for businesses but is now widely used by everyone. The service is set up to accommodate a minimum requirement to mail, and that minimum requirement is one route. Routes cannot be cut or altered. Unfortunately, some of the routes do mimic a legislators' district but cover every residence within that route. The savings for using this method is half of what it costs to use other mailing methods because the item is not oversized, does not require a mailing list, and there is no fee or permit to purchase to use EDDM. The mailing piece contains no specific address. The mail piece is delivered to every postal customer/residence in that route and is not returned since there is no name on the delivery piece. Mr. Tungul stated that he had submitted a request to allow a cut off of certain areas on certain routes to accommodate legislators and their districts, but his request was declined with the explanation the USPS would have to issue exceptions for everyone. The only allowed exception is if a residence has a "do not deliver" status which is for those who do not want to receive mail at that residence.

Another reason EDDM is less expensive is because the sender does not have to pay someone for printing the mail piece. Additionally, the sender can drop the mail pieces off at any post office. When the mail carrier receives the mail out, s/he knows it is a 100% delivery, which means that it is distributed to everyone in that route. It is easier for the carrier to have 100% delivery because he will not have to determine where the item is not to be delivered. Mr. Tungul stated that he has worked with several legislators in the past and there were no issues.

Sen Gardner requested the route maps. Mr. Tungul stated that he usually goes over the EDDM process when someone chooses this service. He stated that he demonstrates how to look at the routes and maps on the USPS website.

Member Cook asked how significant the savings was since it would be delivered to some people outside of a legislator's district; and if it would be significantly less than if it were going to those only in the district. Mr. Tungul replied that the savings were significant because with a mailing list the USPS is required to deliver only to those specified. The sender would save by not having to purchase a mailing list, pay a printer to print addresses, and pay for a permit. The savings are approximately 60%.

Chair Thomas asked if there was a way to look at the maps and determine on a given route how many residences were outside of the legislators' district. Mr.

Tungul referred members to the Overview of EDDM in their packet. On page 14, Item #6, there are instructions on how to change the map to the route of your selection; however, the sender would have to determine how many are in or outside of a legislator's district.

The Chair excused Mr. Tungul and requested that he remain available for questions.

Sen Giessel was invited to the floor. Sen Giessel referred members back page 14 on the Overview document. She explained that the column with the check marks in the tiny boxes on the left is a selected carrier route. The next column reflects the carrier route number, which is 119-C001. The next column shows that there are 889 residential addresses and 43 businesses, totaling 932 delivery points in this selected route to which your mailing piece would be delivered, costing \$135.14. The routes you select will appear on the map. Sen Giessel further explained that you could choose which routes you want, residential delivery only or both residential and businesses. Sen Giessel passed around a newsletter she sent out demonstrating the format, such as where the address goes. Sen Giessel stated that choosing this method of distributing her legislative newsletter resulted in saving the state money and saved money from her office account, which is public money. Sen Giessel referred members to page 1 of Mr. Wayne's drafted opinion. The second to last line states that the USPS will not divide routes when delivering mail by EDDM. Sen Giessel clarified that this is true, except that when you select the route (as she just explained) you are selecting specific streets. Sen Giessel expressed that she felt that this line in the opinion could be misleading because within the route you select, you cannot choose to deliver to 400 of the 889 addresses. You have to choose delivery to all 889. You do have the ability to choose the routes that reflect the streets that fall predominantly in a legislator's district. The statement can be misleading in that it is not an entire zip code that you are choosing when you select a route. The carrier routes are very specific.

Rep Tuck clarified that the opinion states "zip code area or areas that you select for delivery of your newsletter and the USPS will not divide routes". Also, on page 14, only 6 routes were selected of the 17 routes listed, but all 17 routes fall under one zip code. Sen Giessel confirmed this statement.

Sen Giessel referred members to Ms. Anderson's informal advice management activity log entries. On page 2, the second question reads:

May a legislative office use an outside printer to have the newsletter printed and if so, may postal routes be used to mail the newsletter and what about post office boxes?

The answer (second to last line) reads: Post office boxes at the post office in the current district are OK regardless if the owner of the box lives outside the current legislative district....

Sen Giessel explained that this created a problem for her since 90% of one of her house districts has post offices physically outside of the boundary of her district.

She stated that if she were to take this advice literally, this would mean she would not be able to use the Huffman or the Lake Otis post offices because neither is physically located in her district, and yet they deliver mail to 90% of her district. Sen Giessel asked that the committee be cognizant of this as they word the opinion. Sen Giessel stated that this is also stated on page 5, the second from the last question, noting that this may be a problem that applies to her only, since she has a very large and very rural district, which overlaps with an urban district, but stated that there may be other legislators in the same situation as hers.

Member Cook asked Sen Giessel when she selects her routes, if she could estimate what percentage would fall outside her district. Sen Giessel replied to Member Cook that there were two routes that would lapse outside her district; a route at the Lake Otis/Dowling post office and at her own district off Huffman Road, which runs in the middle of Huffman. She cannot deliver her newsletter to her own street on the south side. Sen Giessel agreed with Member Cook that she can tailor her deliveries by selecting certain routes, and that the majority of the deliveries are within her district. Member Cook asked Sen Giessel if she agreed with Mr. Tungul's statement in that she would save 60% in postage using EDDM versus direct mailing to those in her district. Sen Giessel answered yes, that it was phenomenal, although she did not have the data with her, she would agree with 60% easily.

Member Walker asked committee members if the statute required them to factor in the cost in their analysis. Member Cook replied that it did and read exception (A) found on the bottom of page 3 of the opinion:

AS 24.60.030(a)(2)(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and **either the cost or value related to the use is nominal** or the legislator or legislative employee reimburses the state for the cost of the use;

Member Cook added that not only is there a cost savings, there's a phenomenal cost savings. However, the downside to the savings is the issue that the delivery of newsletters will go to some people outside of the legislator's district. Senator Gardner stated that she did not believe that AS 24.60.030(a)(2)(A) applied because the newsletter delivery is not for "personal purposes" (as stated in this statute); rather it is a legislative function.

Chair Thomas asked members to hold onto their deliberation comments, debate/inquires and asked members if there were any more questions for Sen Giessel and/or Mr. Tungul.

Sen Gardner asked Mr. Tungul for a clarification of a route, referring members back to page 19 of Mr. Tungul's handout, and asked if the route numbers contain subsections. Mr. Tungul replied no, and explained that the 001 at the end of a route number is the carrier's route number, 002 is another route, 003 is another route, etc. Rep Tuck passed around his iPad showing a view of a route. He explained that when the box on the left side of the page is checked, the map appears of the selected route, showing the street names in that particular route.

While the iPad was circulated, Chair Thomas asked Mr. Wayne to explain his drafted opinion to the members. Mr. Wayne directed members to No. 1 in the conclusion of the opinion on page 6:

AS 24.90.030(a)(2) prohibits a legislator from using EDDM to distribute legislative newsletters if the distribution is aided by the use of legislative assets or resources and the use of EDDM is likely to result in a significant number of newsletters being distributed to addresses of person who are not among the legislator's constituents.

Mr. Wayne suggested striking the words "a significant" and adding the words "more than a small", reading as follows: "...is likely to result in more than a small number..." Mr. Wayne explained that this would make it consistent with the language in the discussion on page 4, which talks about "small" and "large" and does not talk about "significant". The alternative is changing "small" and "large" to "insignificant" or "significant". Mr. Wayne explained that when drafting the opinion, one of the things he considered was the meaning of the word "constituent." The term is defined in No. 2 of the conclusion, "For the purposes of interpreting (J), 'constituent' means a natural person residing within a legislator's district". Mr. Wayne stated that he wanted to point out there is no statutory definition of the word "constituent." This opinion references several other public documents where the Ethics Committee grappled with this term. In Complaint Decision H 12-04, Mr. Wayne explained that the House Subcommittee used "constituent" and "individuals residing within a legislator's district" interchangeably. On page 5, Mr. Wayne pointed out there is additional discussion stating when terms are not defined by the legislature, the committee can define them in a common and approved usage of the terms. Mr. Wayne referred members to page 6, second paragraph, which states that a similar definition of "constituent" was relied on in AO 04-01 in that "constituent" means a natural person residing within a legislator's district. In the last sentence of that paragraph, Mr. Wayne states that he qualifies the definition to say that for purposes of this definition the committee construes "a natural person residing within a legislator's district" to include natural persons who are legally residents of a legislator's district but are temporarily living elsewhere. There is a footnote at the bottom of the page further explaining the analysis.

Mr. Wayne stated that defining 'constituent' was an important component to this opinion because of exception J in AS 24.60.030 (a)(2) which states that the prohibition on use of legislative resources for the private benefit of a legislator, legislative employee, or another person is permitted when sending a communication in the form of newsletter to a legislator's constituents. AS 24.60.030(a)(2)(J) is usually referred to as an exception, but it can also be read as a limitation. A typical legislative newsletter is acceptable. Mr. Wayne referred members back to the comments from members earlier regarding exception (a)(2)(A). The draft opinion reasons on page 4, that this exception may allow a legislator limited personal use of legislative assets or resources to distribute a copy of a legislative newsletter to a small number of persons that are not among the legislator's constituents; however, the committee would consider each set of facts independently. Depending on the content and distribution of a

particular newsletter, the committee may find that distribution of a legislative newsletter to every address in a zip code area may be permissible if the number of addresses outside of the legislator's election district is small, but the larger that number becomes the greater the risk that the committee would determine that the limited use exception in (A) did not apply. Mr. Wayne explained the opinion provides a subjective test for the committee to follow if a particular scenario comes before the committee. The committee can weigh whether or not there has been an abuse of the exception or whether or not the use, based on the exception, is reasonable.

Member Walker requested clarity from Mr. Wayne on the "limited use" exception and his analysis in AS 24.60.030(a)(2), in that you cannot use state resources. Mr. Wayne responded by pointing out that (a)(2) is the prohibition, (a)(2)(A) is the exception. The exception says that the prohibition doesn't apply to limited use, which is why the words are bolded. This is a very important point to remember for those reading the opinion and deciding on whether to send the legislative communication to a specific group of constituents. Additionally, the committee needs to keep in mind the same point if a complaint is received and determining if the mailing did exceed limited use and go outside of the exception.

Member Walker stated that he felt another line should be added for clarity in the conclusion to make the distinction clear that the subjective is determined by the committee. Mr. Wayne noted that the subjective is also made by the person who is deciding to do it. Advisory opinions are a guide with parameters so those covered by the Act know what to do, are not afraid to do something, and have an understanding of what the opinion means. The committee certainly does not want those covered to find it too confusing and become discouraged from performing the activity at all. Mr. Wayne stated again that those covered need to understand that a few or a small number in comparison to the total number is okay. Conversely, they need to know that it is not ok if more than a small number is delivered outside their constituency.

Member Turner asked Sen Giessel if she knew the number of residents in her district and approximately the number of those outside of her district that she would be reaching. Sen Giessel provided some approximate numbers.
(INAUDIBLE BETWEEN MEMBER TURNER AND SEN GIESSEL)

Mr. Wayne requested to weigh in on the discussion stating that although he was not sure if a distinction needed to be made between people and addresses, he felt that what the committee might be looking for is the number of addresses that are in or out of a district. He further stated that it could get confusing if you are looking at people for a comparison and addresses for another comparison.

Rep Tuck stated that the committee made a recent decision on using newspaper routes in a case. He asked how that case is different than this one, because the usage was minimal, because this person went outside his district, and it was

cheap. Member Walker stated that the case he was referring to occurred during a campaign season.

Chair Thomas asked Mr. Wayne if this would apply during campaign season. He stated that he, too, believed that that was the distinction between the two cases. Mr. Wayne explained that the limited use exception is for personal use and not for campaign use and referred members to the exception at the bottom of page 3. He further explained that the committee has wrestled with that issue in other matters as well in that the limited use exception does not apply to campaigning.

Sen Giessel directed a question for the attorneys in the room, referencing the prohibition portion of (a)(2):

“A legislator or legislative employee may not use public funds, facilities, or another government asset or resource for a nonlegislative purpose...”

Sen Giessel stated that a newsletter does not fill that description because it is a legislative purpose. Sen Giessel further quoted a portion of (a)(2):

“...or for the private benefit...”

Sen Giessel stated that the fact that some of the people fall outside of her district is no benefit to her. Those people cannot vote for her, nor will they be able to vote for her in the future; therefore, there is no benefit. Sen Giessel asked for clarification.

Member Cook responded that in redistricting context, sending newsletters to an area that may be in a legislator’s new district, does not a legislative purpose. Rather the mailing is considered to have a campaign purpose, because you want those people to elect you. A legislative newsletter sent to a legislator’s constituents has a legislative purpose. But a newsletter sent/distributed to people outside of a legislator’s district, does not have a legislative purpose. The committee has determined that the mailing was for a nonlegislative purpose. Chair Thomas added that he believe that Member Cook’s point is that the committee considers a newsletter to have a non legislative purpose if it is going to someone who is not your constituent, regardless if those people may be captured later in the legislator’s district.

Sen Fairclough stated that in an election cycle, that definition will work, but in her legislative capacity, it does not, because she is elected by a group of people to service the state of Alaska. Sen Fairclough stated that she wanted everyone to be involved in the discussion of an issue. Her district is in Eagle River and now also East Anchorage; however, 99577 is pretty exclusive to Eagle River, so there would not be many outside of her district. Her constituency is the state of Alaska. She stated that she is not supposed to look at benefitting her district in a particular way when a piece of legislation comes before her. She stated that she is supposed to rise above that and say that all Alaskans be considered in the best decision for Alaskans. Most of the time that is consistent for what her district would ask for, but sometimes they might not think that a rural school in a community is higher priority than a football field in her hometown. She voted for those rural schools so they could get funded. In conclusion, defining constituency is different for her.

Several committee members commented that they, too, have had numerous discussions over the term of constituency many, many times.

Rep Tuck stated that he wanted to bring up the past decision he spoke of earlier, stating that due to the fact when the individual used the newspaper route, the interim plan had not been put in place yet. No one knew where the district lines were going to be. If we want to make a distinction between a campaign season and interim, then we need to put that in this opinion. Rep Tuck stated that is the only distinction he can see between that case and this one. It was a sliver, a tiny amount that went outside; the mass of it was his current district, and the only difference he can see is that it was an election year. It occurred at the very end of session, so it was an end of session newsletter that went out.

The Chair asked members if they had any other questions for Mr. Wayne. Member Mallott asked if legislators could put something in their newsletter that stated the newsletter was intended for their district only and if you received this in error, etc. Members discussed that this type of statement would be considered a disclaimer and did not know that it would help anyone if a complaint were to be filed. Mr. Wayne responded that that would be a policy call if the committee thought a disclaimer would be critical or significant to the issue.

Sen Fairclough stated that she like the term “subjective.” However, if someone were to comply with every term of what is asked of him/her, the word “small” is still not defined. When looking at the proposed route, could a percentage could be applied? For example, selecting a route that had over 51% of the residences in the legislator’s district, thereby making it the legislator’s responsibility to determine the amount of people that she would reach. What does “small” mean to the committee? What percentage falls in this term?

Chair Thomas stated that he had cut Ms. Anderson off from commenting earlier on a comment that was made by Sen Giessel and invited Ms. Anderson to address Sen Giessel’s comment regarding the post office boxes. Ms. Anderson stated that the two pieces of informal advice regarding post office boxes had to do with what she calls outside of the Anchorage area, such as the Auk Bay Post Office. She had received a call about sending legislative communications to the post office box holders since the post office will not release addresses of owners of a post office box. The other one was similar; also post office boxes in a rural area near Fairbanks. The committee may or may not want to include this in the discussion but she has received calls about delivery to post office boxes in a particular zip code. She asked Mr. Tungul if the postal carriers, when delivering EDDM mail, deliver to post office boxes in that route as well? Mr. Tungul replied that there is an option to delivery to post office boxes. The section on the form allows the sender to determine if the mailing will be delivered to post office boxes. Rep Tuck reiterated that there were three options available to the legislator: resident, business, and/or PO Box. Sen Gardner stated that what seems relevant is not where the post office is located but rather what area it serves. Chair Thomas asked if there were any comments from the public either attending in person or by teleconference. None.

Sen Giessel stated that in terms of cost savings, it is not just the postage. Sen Giessel explained the process, stating that you can have your legislative newsletters printed in-house with no cost to you. If you want each one individually labeled, the printed newsletters must be taken to a mail house. The use of a mail house is a required step by Federal NCOA Processing which means the mail house sends your list of addresses to a federal office for approval. There is a charge for this service. The addresses are bar coded on the label and placed individually on each newsletter and then mailed via the bulk mail process. Using EDDM means all the printing is done in-house completely eliminating the middle man handling fee. The savings on postage would be from .25 cents to .16 cents, making it a .09 cents savings for each piece. A huge cost savings when you are mailing out thousands of pieces.

Mr. Tungul commented that he did not know what the mail house charges, but a legislator could still do a route using a permit but the cost of printing would still be the same for that particular route. The .25 is just for demographics. If you wanted to saturate your mailing, using a permit, the .16 cents would still apply.

Member Cook stated that even though there is a big cost savings, the incentive to limit the number of outsiders receiving the mailing exists due to the cost of sending to those who are not in the district.

Rep Tuck reiterated that he would like to know what the distinction between today's decision and the decision on the recent complaint issued by the committee that he mentioned earlier. He stated that he has been very careful when using EDDM that he chooses routes only in his district. For routes that went outside of his district, he personally went door-to-door and handed the newsletter out because he did not want to make the mistake that a fellow legislator had made. He asked members to explain to him the difference between when it is acceptable to use legislative resources for delivering newsletters outside of their districts. If the committee is saying that it is acceptable during the interim but not at the end of session, and during an election cycle, then the opinion needs to specify this. He suggested that the members review the conclusion that was made on the recent case as he did not have any information about it and was going by memory. He would like to review the committee's rationale for the decision.

Members discussed the term of the words "small" used in this opinion. Sen Giessel pointed out that the three legislators who will be voting on this opinion today all had "urban" districts. She was the only legislator present today with a "rural" district. For her to go "door-to-door" to deliver newsletters would not be an option. Member Mallott commented that she defined "urban" as a village in the interior that is remote. If in Anchorage, it is probably defined as a community like Sterling. Is Sterling considered "urban"? Members answered no and discussed the meaning of the terms "urban" and "rural". Sen Fairclough stated that the most common way the terms are defined is by the type of road access there is to them.

Member Cook stated that there are many undefined words in statute and suggested replacing the word “small” used in the opinion on page 4 and in the conclusion, to “limited”, because it is already being used in the opinion. The use would be consistent with the statute. Members discussed defining “limited” to a percentage but recalled roadblocks in previous discussions on this option and decided not to define the term.

Member Cook motioned that the opinion be adopted with a change on page 4, in the middle paragraph of the page, from “small” to “limited” in two places, and on page 6, in the Conclusion, that it be changed to “more than a limited number of”.

Rep Tuck stated that he would like to read and discuss the recent complaint decision before voting on adopting the opinion. The opinion may need language that states whether or not the district lines have been affected by the redistricting and whether or not it is a campaign season. Those two factors played a significant role in the previous decision. The motion is premature until members can review the complaint decision and verify the analysis used.

Member Thomas agreed that members could hold on the motion, take a break, read the decision, and come back for discussion.

MEMBERS TOOK A 10 MINUTE BREAK AT 10:45AM

MEMBERS RESUMED AT 10:55 AM

Each member was handed out a copy of Complaint Decision H 12-04, Determination of Probable Cause, during the break.

Rep Tuck stated that this legislator’s newsletter went out in March; the complaint was filed in April, long before we had an interim plan to determine the next election cycle. The conclusion was based on the 2012 redistricting plan during that time, but no one knew at that time what the lines were going to be. There were all kinds of questions, there were maps presented, and some were all over the place depending on where you lived. As of about 6 weeks ago, we had 11 or 12 maps that were being presented on the redistricting board website. If we are going to base this opinion on a redistricting year, we need to spell it out. Today, we still have those provisions in place and a redistricting situation in front of us. Rep Tuck stated that we also needed to differentiate the time frame for one campaign season to the next campaign season.

Ms. Anderson stated that in response to Rep Tuck’s reference to the H 12-04 decision on page one where it talks about the 2012 redistricting plan in place, it is important to note the reference to 2012 redistricting was contained in the allegation. It was never stated in the decision. Also, under the determination of probable cause, Allegation 4(a), on page 3, the committee found the subject of the complaint in violation of using state resources for a private benefit. On page 4, the committee determined that the subject of the complaint was in violation of using state resources for campaigning. The second paragraph under Allegation

4(b) reads: In a year in which redistricting occurs it is especially important with regard to legislative communications, to take note of the timing when sending out a newsletter, etc. Ms. Anderson also read the second paragraph on page 4, which states that the committee commented it is especially important in a year in which “redistricting” occurs to be cognizant of the fact legislative district boundaries are changing.

Representative Tuck stated that he would like this type of language inserted in the advisory opinion. Chair Thomas asked Rep Tuck if he was suggesting adding a cautionary line stating something like campaigning is prohibited or perhaps that there is no exception for campaigning or it may be considered campaigning if... Representative Tuck suggested making it even stronger than that, saying something like you cannot go outside your district boundaries during a campaign year. A legislator always has the option of using direct mail or a door-to-door drop, which was the method used before EDDM became available. In H 12-04 the subject of the complaint has been using this method over a long period of time. The mailing just happened to be during a redistricting year and campaign season.

Mr. Wayne interjected that he had a copy of H 12-04, and upon looking at the draft opinion, on page 2, under Discussion, the committee states that there are two reasons for a violation: 1) The committee determined that a representative received a private benefit by using state resources to distribute his newsletter to every address in a zip code that included individuals residing outside of his current legislative district. 2) The house subcommittee also found, separately, that the distribution was campaigning in violation of AS 24.60.030(a)(5).

Mr. Wayne recommended adding to the conclusion a footnote or a number 3 saying, “This opinion does not address AS 24.60.030(a)(5)”. This subject matter was not part of the question in front of the committee today.

Chair Thomas restated what he believed Rep Tuck wanted, which was language that would distinguish this opinion from the decision that was made. Member Cook stated Mr. Wayne provides that distinction on page 2, in the footnote, which states, “It is foreseeable that some of those individuals would become members of the legislator’s new legislative district...”

Representative Tuck stated that it is difficult when something is foreseeable or not in this situation because the district lines have been all over the place in the Fairbanks area. Representative Tuck stated that he understood the decision made at the time. However, the committee said that regardless of the intent, the committee recognized the fact that state resources were used; bottom line; no exceptions. Currently, the way the opinion is drafted, someone could make the exact same mistake. Rep Tuck stated that he believes the language from H 12-04, page 4, paragraph 2, should be added to the opinion. The committee stated in the decision that it is especially important in a year in which “redistricting” occurs to be cognizant of the fact legislative district boundaries are changing.”

Senator Gardner stated that if they insert the language Rep Tuck is suggesting it should be expanded to include mention of a house member who is considering moving up to the senate.

Representative Tuck stated that he absolutely supports using EDDM and saving the state money, even if it means going outside the district lines a little bit, but he does not want to see another legislator found in violation if this occurs during certain time periods. The complaint issue arose primarily because of redistricting. He suggested clarifying the opinion by saying a non-election cycle or non-election year, as long as the committee is consistent. Member Walker stated that he agreed to adding the language as Rep Tuck suggested.

Members discussed where to insert the additional language. Sen Gardner pointed out that a campaign year is every other year for house members. Mr. Wayne interjected that the exception in the draft opinion applies to personal not campaign use. Rep Tuck replied that the opinion was based on an action and it needs to be covered whether it is in a campaign year or not and should be included in the conclusion. Member Cook stated that it would only apply in a campaign year during redistricting.

Member Walker asked Mr. Wayne that if the draft opinion question did not include the campaign exception, would adding clarifying language change the impact of the opinion. Mr. Wayne stated language to this effect could be added to the opinion even though the opinion does not discuss it. The language could state that it is not applicable to this set of facts or state just don't do this during a campaign year.

Chair Thomas stated there was also Member Cook's idea to add clarifying language, such as, "when you addressed the opinion, legislative newsletter during a campaign period is not addressed here." He added that he would not want language just addressing a prohibition.

Mr. Wayne stated he was open to suggestions as the opinion is a working draft. He then suggested the following language, "as noted in H 12-04, if the distribution takes place during a campaign period, additional prohibitions may apply". Chair Thomas asked if it would automatically apply or is it really that the likelihood of it being determined to be campaigning is greater if it occurs during that period of time. There's not necessarily a prohibition. Mr. Wayne responded that there were specific prohibitions about newsletters during campaign periods in the statute.

Ms. Anderson pointed out that a "campaign period" timeframe is defined in AS 24.60.030(c)(1). It begins 60 days before the date of an election and ends on the day of the election. The committee should take this definition into consideration when drafting language using the term 'campaign period.' Chair Thomas posed the question as to why we would add this prohibition to the opinion if it's already in statute. Member Mallott commented that the representative in H 12-04 mailed his newsletter in March, way more than 60 days before an election. Rep Tuck

added that it was way before the subject of the complaint he filed his letter of intent. It was during session. However, the committee's recommendation was regardless of intent. He used state resources to mail his newsletter to those who were not in his current district. Chair Thomas added that the underpinning was because of the determination that he was using state resources for campaigning. Once that determination was made, there is no exception.

Chair Thomas reminded members that there was a motion on the floor for a suggestion for a revision with regards to the term "limited" and with regards to adding some cautionary language in the opinion, possibly in the conclusion.

Mr. Wayne stated that he wanted to expand on the use of the word "limited." He stated that during the break, he looked up the terms "significant" and "insignificant" in the dictionary.

"significant" means:

1. Having meaning;
2. having or likely to having influence or effect as in a significant piece of legislation;
3. of a noticeably or measurably large amount.

"insignificant" means:

1. Lacking meaning or support;
2. not worth considering;
3. lacking weight position or influence;
4. small in size quantity or number

Mr. Wayne stated that he was concerned whether "limited" meant size or effect and whether or not it would be useful to people. Chair Thomas and Member Cook reiterated that it follows the language already in statute, leaving only one undefined term. Rep Tuck stated that he would be satisfied if a previous opinion or H 12-04 were referenced in the opinion as a reminder for legislators to read the opinion or complaint decision when reading this opinion. Chair Thomas stated that he liked Rep Tuck's suggestion, adding that it could be a footnote of a summary on the opinion. Rep Tuck added that he liked a previous suggestion made by a committee member to add a warning that says different statutes and regulations apply during a campaign year and when redistricting occurs.

Member Cook suggested the following wording be added to the end of the Discussion:

That legislative newsletters distributed outside the legislator's district by a legislator who is or may foreseeably run for an elective office in which those recipients could vote may well be prohibited as campaigning.

Mr. Wayne suggested adding "depending on the facts before us, more than 10% might be considered excessive." Members discussed whether 10% was agreeable to all. Senator Fairclough commented that 10% might work for an "urban" legislator. Sen Giessel has a diverse district. It would be easier to see the number of

routes or which routes the legislator selected to see whether or not there was intent. Rep Tuck responded that the routes are pretty tight so it would be pretty easily determined.

Sen Gardner stated that the Conclusion was a negative as it prohibits a legislator if the use is likely to result in more than a significant number. Sen Gardner asked Mr. Wayne if they reworded it to say, “does not prohibit the legislator unless the use is likely to result in more than a significant number...” What does that do to the meaning?

Mr. Wayne repeated Sen Gardner’s rewording below and stated that it would work.

“AS 24.60.303(a)(2) does not prohibit a legislator from using EDDM to distribute legislative newsletters unless the distribution is aided by the use of legislative assets or resources and is likely to result in more than a limited number of newsletters being distributed to addresses of persons who are not among the legislator’s constituents”.

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

Mr. Wayne verified that they were changing the word, “small” to “limited” on page 4, and making changes to the language in the Conclusion.

Sen Fairclough left the meeting at 11:30 am.

Sen Giessel rejoined the meeting at 11:30 am as a committee member.

- 10. DISCLOSURE WAIVER: AS 24.60.105(d), Request for Waiver of Ethics Disclosure** – Chair Thomas provided a recap of where the committee left off. Previous discussions were held on January 16, 2013, and February 26, 2013. He stated the goal today was to finalize the waiver form.

Ms. Anderson provided a recap of the changes that were made as a result of the previous two committee meetings. Draft 1 incorporates changes made by the committee at the February 26 meeting, and Draft 2 reflects changes proposed by Ms. Anderson.

Ms. Anderson stated that instead of using the statutory language, she added two check off boxes instead. If the person’s status with whom the association exists is with a legislator or legislative employee, s/he would check that box. If the association exists with a public official or lobbyist, s/he would check that box. Since public officials and lobbyists are not covered by the Legislative Ethics Act, this would indicate that they are “external” associations, while legislators and legislative staff, who are covered by the Act, would be considered “internal”

associations. This information would be useful to the committee to determine if additional information was needed.

Senator Gardner asked the committee if there would ever be an occasion when an association would be with a person who would not be licensed. Members discussed whether inserting the words, “if applicable” was necessary.

Chair Thomas stated that he would like to add to the top of the form the suggestion that Member Turner made at the last meeting, “This form constitutes as the . . .”

Senator Gardner motioned to adopt Draft 2 version of the Disclosure Waiver form with the proposed changes.

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

11. **OTHER BUSINESS:** Ms. Anderson stated that the COGEL (Council on Governmental Ethics Laws) Conference is being held in Quebec, Canada, on December 7-11, 2013. There is money budgeted for travel if anyone is interested in attending. The topics on the agenda are campaigning, financial disclosures, and ethics.

Members discussed the next meeting date. Ms. Anderson stated that she would follow up with an email to the members with several date options.

12. **ADJOURN:** Member Turner made a motion to adjourn the meeting at 11:30 am. No objection.