

Alaska State Legislature

Select Committee on Legislative Ethics

425 G Street, Suite 711
Anchorage AK 99501
(907) 269-0150
FAX: 269-0152
ethics.committee@akleg.gov
<http://ethics.legis.state.ak.us/>

Mailing Address:
P. O. Box 101468
Anchorage, AK
99510 - 1468

MINUTES from May 29, 2014 FULL COMMITTEE MEETING Anchorage LIO, Conference Room 105

1. **CALL THE MEETING TO ORDER:** Committee Chair Gary Turner called the meeting to order at 8:33 a.m. Members present: Senator Anna Fairclough, Senator Berta Gardner, Representative Andy Josephson, Janie Leask, H. Conner Thomas, Dennis “Skip” Cook. Staff present: Joyce Anderson. Teleconference: Dan Wayne, LAA Legal. Representative Charisse Millett (joined the meeting at 10:40 a.m.). Absent: Herman G. Walker, Jr.
2. **APPROVAL OF AGENDA:** Member Thomas motioned to approve. No objections. Motion passed.
3. **APPROVAL OF MINUTES:**
 - a. **October 28, 2013 Full Committee** – Minutes incomplete. Ms. Anderson stated they will be completed by the time of the next committee meeting.
 - b. **January 23, 2014 Full Committee** – Minutes incomplete. Ms. Anderson stated they will be completed by the time of the next committee meeting.
 - c. **January 23, 2014 Senate Subcommittee** – Senator Gardner motioned to approve. No objections. Motion passed.
 - d. **January 23, 2014 House Subcommittee** – Member Cook motioned to approve. No objections. Motion passed.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
 - a. Informal Advice Staff Report – Ms. Anderson stated that the Ethics office has been extremely busy since the ending of last year and beginning of this year with disclosures, committee meetings, and various other issues; therefore, the staff report is not up to date but is a work in progress.

- b. Ethics Disclosures – Ms. Anderson referred members to the report in today’s packet, noting that there were 252 disclosures filed between Jan 1 and Mar 31, 2014; of that number, 113 were filed by legislators and 139 filed by legislative staff. The largest number of disclosures filed was “Memberships on a Board of Directors”, which was 107; followed by “Close Economic Associations”, which were 97. Ms. Anderson referred members to the report on “late disclosures”, which is a Rules of Procedures requirement.
 - c. Ethics Legislation Update-28th Legislature – Ms. Anderson reported there were no updates to the Ethics Act through ethics legislation for the 2013/2014 Legislature. There was a change, however, in the Revisor’s Bill legislation. The term ‘adoptive’ was changed to ‘adopted’ in all state statutes. That term is used in the definition section of the Ethics statute.
6. **BUDGET - FY 14 Update:** Ms. Anderson stated that FY 14 ends on June 30, 2014; there is a balance of roughly \$62,000, which will cover staff payroll, contracts, and travel expenses incurred for today’s meeting and possible travel expenses related to her job position search.

Chair Turner asked if the balance can be carried forward. Ms. Anderson answered stating left over money cannot be carried over and is returned to the general fund.

Ms. Anderson provided an update on the FY 15 Budget. The operating budget was approved and signed by the Governor. Ms. Anderson had contacted Executive Director Pam Varni for an explanation as to why the increase for Personal Services in our budget was declined. Ms. Varni provided a written response stating that Personal Services cost increases were requested by Ethics, the Ombudsman’s Office, and Office of Victims’ Rights, but none was approved. Ms. Varni stated that with the Ethics Administrators’ position becoming vacant, there is a possibility that the new hire will not have the same pay range, which could become a cost savings. Each year, Legislative Affairs Accounting Department contacts Ms. Anderson and asks if Ethics will be lapsing any money. Ms. Anderson reviews and provides LAA with projected costs. At the time she projected a lapse of \$5,000 she had not considered retiring. The Agency Request amount and what the Governor approved was less than what was requested.

7. **ADMINISTRATOR POSITION UPDATE** – Chair Turner invited Member Leask to provide the committee an update. Member Leask stated that the Administrator Subcommittee, which consists of Gary Turner, Joyce Anderson, and herself, received 29 job applicants, which were scored on a set of minimum requirements. Of the 29 applicants, sixteen were selected. Out of the sixteen, six were selected for a phone interview, three of which the subcommittee will be doing tomorrow, and three more on June 4, 2014. After the phone interviews, they will narrow the list down to the top three to five which come in for in-person interview. The subcommittee will make a recommendation to the Full Committee, which will meet in executive session to select the individual. Member Leask

stated the subcommittee has been impressed with the number of people interested in the position as well as the qualifications and experience of the applicants.

Member Thomas asked how the position was advertised.

Member Leask deferred the question to Ms. Anderson. Ms. Anderson stated that two-week ads were placed in the Fairbanks Daily News Miner, Juneau Empire, and Anchorage Daily News. A notice was also sent to legislators and agencies of the legislature with a request to post the notice and forward on to their mailing lists. It was also posted on Workplace Alaska, which is where all state jobs are posted. The job was posted for two weeks, from May 1-15, 2014. The deadline to apply was 5:00 p.m. May 15. The cost of placing the ads in the various newspapers varied depending on the number of lines in the ad. The Fairbanks Daily News Miner had a promotion going on which cut down the cost of advertising and allowed us to have a larger, quarter page ad.

Chair Turner then discussed placing Ms. Anderson on contract for a one year period to provide for a smooth transition between administrators. Committee members agreed and stated the job was not one that a person could learn after a couple of months due to the complexity and cyclical nature of the work performed. They also suggested that Ms. Anderson be present at legislator and staff ethics training in Juneau in January of 2015. Ms. Anderson agreed to the suggestion.

Chair Turner suggested the hourly rate should be the same as she is currently receiving. The proposed contract was for \$10,000. Sen Fairclough stated the contract should be increased to \$25,000 as \$10,000 would barely cover the time period of one half year. There was no opposition. Members asked Ms. Anderson if she was willing to go on contract for the one year period. She responded yes.

A motion to approve Ms. Anderson's contract as amended was made by Member Cook and seconded by Member Leask. A roll call vote was taken: YEAS: Janie Leask, Senator Berta Gardner, Dennis "Skip" Cook, Senator Anna Fairclough, Chair Gary Turner, H. Conner Thomas, Representative Andy Josephson; NAYS: None. ABSENT: Representative Charisse Millett; Herman G. Walker, Jr. Motion passed.

8. ADVISORY OPINION 14-01

Member Thomas made a motion at 9:00 a.m. to go into **EXECUTIVE SESSION**** to discuss a matter which is confidential by law under AS 24.60.160(b).**

Committee members did not object to Ms. Anderson, Administrator, and Dan Wayne, LAA Legal Counsel, attending the executive session.

Senator Gardner made a motion at 9:40 a.m. to go back into public session. Meeting returned to OPEN SESSION and called to order by Committee Chair Gary Turner.

Member Thomas made a motion to approve Advisory Opinion 14-01 as modified. Roll call vote was taken: YEAS: Senator Anna Fairclough, Senator Berta Gardner, Representative Andy Josephson, Janie Leask, H. Conner Thomas, Dennis “Skip” Cook. NAYS: None. ABSENT: Herman G. Walker, Jr., and Representative Charisse Millett

Ms. Anderson reminded the committee that all advisory opinions once approved by the committee are public information. AO 14-01 will be noticed in the next ethics newsletter, THE ADVSIOR.

Committee took a five minute at ease and returned at 9:50 a.m.

9. ADVISORY OPINION 89-06 – Travel/ Hospitality: Recommend rescinding the opinion

NOTE: The recording for the meeting is no longer available at this point of the discussion. Ms. Anderson’s notes are presented below.

Mr. Wayne explained the law has not changed significantly but the interpretation by the Committee has changed over the course of twenty-five years. In 1989, the committee determined a gift of travel/hospitality for attending a partisan political meeting [the 1988 biennial convention of the state Democratic Party] was a gift “primarily for the purpose of obtaining information on matters of legislative concern” and required a disclosure.

Since that time, the committee has determined state resources cannot be used for any activities that are “for involvement in or support of or opposition to partisan political activity” or for the purpose of political fundraising or campaigning.” AS 24.60.030(a)(2) and (a)(5).

Mr. Wayne did not recommend rescinding the opinion but preferred placing a note in the opinion database stating the opinion was decided under prior law and should not be relied upon. He also stated AO 89-06 could not be edited. Ms. Anderson commented that her preference would be to rescind the opinion rather than include a note about inapplicability. Her concern was that a person covered under the Act would try to determine which sections applied and rely on that interpretation and proceed with an action.

There was considerable discussion by committee members regarding the proper course of action to take. Senator Fairclough made a motion to rescind AO 89-06 with an explanation. She suggested the following: The committee determined a “matter of legislative concern” does not include attending a political party convention. Mr. Wayne stated such a statement was limiting and did not include all the possibilities that may fall under the category of “partisan political activity.” Senator Fairclough rescinded her motion.

After further discussion, Senator Fairclough made a motion to rescind AO 89-06 with a note stating the opinion was decided under previous law and should not be relied upon along with a reference to refer to current Alaska statutes. Member Leask seconded the motion.

A roll call vote was taken: YEAS: Representative Andy Josephson, Chair Gary Turner, Senator Berta Gardner, Senator Anna Fairclough, Janie Leask, Dennis “Skip” Cook, H. Conner Thomas, and Representative Charisse Millett. NAYS: None. ABSENT: Herman G. Walker, Jr. Motion passed.

10. RULES OF PROCEDURE – Suggested revisions and updates.

Chair Turner explained that the committee’s Rules of Procedure are updated periodically for clarification reasons, new procedures, or statutory changes. Chair Turner asked Ms. Anderson to explain the suggested changes. The recommendations are based on statutory changes as well as a review of internal procedures and policies by staff.

- a. SECTION 10 Advisory Opinions – Ms. Anderson recommended adding a subsection to address confidentiality when off-site communication is required during an Executive Session. She read aloud Section 10(b)(3).

Committee members reviewed the recommended addition and had no changes to the language as stated. Member Thomas made a motion to approve the changes to Section 10 as stated. Motion approved unanimously.

- b. SECTION 11 Disclosures – Ms. Anderson recommended several changes to this section to clarify the process of reviewing disclosures, assessing late disclosure fines, and late letters. Chair Turner suggested one motion be made to approve all the changes recommended for Section 11.

Section 11(a) Forms – Ms. Anderson stated the section clarifies that the committee approves all disclosure forms. Language was deleted that referred to obtaining additional disclosure information and a new section was created – see Section 11(b).

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(b) Review of Disclosures – Ms. Anderson added a new section stating that committee staff is authorized to request additional information on disclosures for purposes of clarification and compliance with the Act. Previous language authorized just the “committee.”

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(e) Review of Confidential Disclosures and a Request to Refrain from Making a Disclosure – Ms. Anderson updated the section to include the

process to refrain from making a disclosure under AS 24.60.105(d) and added language to define the process when the committee chair and administrator are unable to determine if the disclosure meets statutory requirements.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(g) Late Disclosures – Ms. Anderson stated the section was divided into subsections to provide better clarity with one addressing “Late Disclosures” and one defining “Late Disclosure Fines.” This subsection defines the difference between a first late disclosure and a subsequent late disclosure. New language addresses the fact that a break in service does not invalidate a first late disclosure.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(h) Late Disclosure Fines – Ms. Anderson stated a new section was added stating the three types of fines pursuant to AS 24.60.260(c) along with language making it clear the committee chair and administrator have the authority to impose fines.

Committee discussed the recommendations and had no changes to the suggested language.

Section 11(i) Requirements After Leaving Office or Employment with the Legislature – Ms. Anderson stated a timeframe for notifying outgoing legislators was added and will be “within 20 days” after leaving office; language was added that makes it clear the Legislative Personnel Office or other hiring agency is responsible for notifying employees leaving legislative employment; language was added to clarify that both employees terminating employment and those going on lay-off status should receive the letter; and language was added stipulating the Ethics Office will update the letter annually.

Committee members discussed the recommendations. The 20 day recommendation was changed to 30 days to give Ethics staff sufficient time to send out the notification.

Member Thomas made a motion to approve the changes as recommended to the entire Section 11 with the one revision to Section 11(i) which resulted in changing the time frame from 20 days to 30 days. Motion approved unanimously.

11. **INDEPENDENT CONTRACTORS AND CONSULTANTS**—Legislative Employee pursuant to AS 24.60.990(a)(11). This item is a continuation from the January 23, 2014, meeting. Chair Turner reminded the committee the discussion relates to whether an independent contractor and consultant is required to complete ethics training and comply with the requirements of the Act; i.e., restrictions, disclosures, etc. The committee had previously determined there were two

options that needed further discussion and research.

Chair Turner explained that one option was to change the definition of “legislative employee” under AS 24.60.990 through a statutory change which would limit certain sections of the Act as applicable to independent contractors and consultants. The other alternative was to issue an advisory opinion that further defined independent contractors and consultants under the current statutory definition of legislative employee.

Ms. Anderson presented a brief overview of the subject. LAA Research was asked to research at least 25 governmental bodies and ask the following questions:

- Are independent contractors/consultants considered an employee for purposes of ethics compliance?
- Are independent contractors/consultants covered under separate statutory language for purposes of ethics compliance?
 - If yes, what statutory ethics requirements apply?
 - If only certain contractors/consultants are covered, what detailed criteria are used to make that determination?

A copy of the condensed research was included in the members’ packet. Ms. Anderson went over each of the categories.

- 7 entities did not include independent contractors and/or consultants in the definition of employee.
- 3 entities covered contractors under ethics laws with no separate distinction or qualification.
- 3 entities covered contractors if they performed a “government function.”
- 2 entities covered contractors if they were subject to the control of the employer.
- 10 entities offered a variety of specific variables that either included or did not include contractors and/or consultants under specific ethics laws or ethics laws in general.

Discussion by committee members revolved around not only the differences between the 25 states highlighted in the study but what is currently in place in our statute.

Senator Fairclough pointed out that we need consistency with contract language regarding ethics compliance. The current statement does not adequately explain what is required of a contractor. She suggested we take a 360 degree look at the issue.

The committee determined the best course of action would be to have a statutory change. Areas to consider would be clarifying the definition of “legislative employee” or defining “independent contractor” and “consultant” or limiting the Act’s applicability by creating a separate statutory section similar to statutory language defining ethics compliance for legislative interns and volunteers.

Senator Fairclough made a motion to pursue a statutory change that would address independent contractors and consultants in relation to compliance with the Legislative Ethics Act.

A roll call vote was taken: YEAS: Representative Andy Josephson, Chair Gary Turner, Senator Berta Gardner, Senator Anna Fairclough, Janie Leask, Dennis “Skip” Cook, H. Conner Thomas and Representative Charisse Millett. NAYS: None. ABSENT: Herman G. Walker, Jr.. Motion passed.

After considerable discussion, the committee decided to establish a Contract Subcommittee to look at the issue. Representative Millet and Sen Gardner volunteered to be co-chairs with Rep Josephson and Member Thomas serving as well. Representative Tuck, an alternate committee member, will be asked if he would like to serve on the subcommittee since he was a member of the Ethics Committee during the majority of the discussion on this subject.

Chair Turner suggested the subcommittee meet two to three times over the summer. He also noted any member of the committee is welcome to attend the Contract Subcommittee meetings. The subcommittee was tasked with making recommendations for a statutory change that would preserve the integrity of the legislative process and avoid conflicts of interest or even appearances of conflicts of interest for those on contract with the legislature. Ethics office staff will be available to attend the meetings and obtain additional information if needed. The subcommittee was also tasked with making a recommendation as to how the committee should proceed with proposing legislation, obtaining a sponsor, and subsequently moving the bill through the legislator. Many committee members believed the best way to proceed would be to work with the House Rules Chair.

12. **OTHER BUSINESS:** None.
13. **ADJOURN:** Senator Gardner motioned to adjourn the meeting at 11:35 a.m. No objection.