

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from September 28, 2007 FULL COMMITTEE MEETING Anchorage LIO, Room 220

1. Call the Meeting to Order: The meeting was called to order at 9:10 a.m. by Chair Dennis (Skip) Cook. Members present: Senator Con Bunde, Senator Gary Stevens, Representative Bob Roses, Herman G. Walker Jr., H. Conner Thomas, Gary J. Turner and Ann Rabinowitz. Member absent: Representative Berta Gardner (Note: Representative Lindsey Holmes, alternate member for Representative Gardner, is also unable to attend the meeting). Staff present: Joyce Anderson and Dan Wayne, LAA legal.

2. Approval of Agenda: Member Thomas made a motion to add to the agenda a full committee Executive Session after the open committee meeting. Hearing no objection, item added. Senator Bunde made a motion to approve the agenda as amended. Hearing no objection, agenda approved.

Approval of Minutes: Senator Bunde made a motion to approve the full committee minutes from the June 11, 2007 meeting. Hearing no objection, minutes approved. Representative Roses made a motion to approve the House Subcommittee minutes from June 11, 2007. Hearing no objection, minutes approved. Representative Roses made a motion to approve the April 17, 2007 House Subcommittee minutes. Hearing no objection, minutes approved. Senator Bunde made a motion to approve the April 17, 2007 Senate Subcommittee minutes. Hearing no objection, minutes approved.

3. Public Comment: None.

4. CHAIR/STAFF REPORT:

a. Disclosures: Ms. Anderson reported the disclosure list in the packet is current as of September 28, 2007. There are more disclosures than usual because of the awareness of ethics.

Staff reported a certified letter was sent to former Representative Jim Holm on June 15, 2007 per committee action at the June 11, 2007 meeting. The letter notified Mr. Holm of his duty to complete ethics disclosures upon leaving office and of the committee's action to impose a fine of \$200 for failure to file the disclosures in a timely manner. The letter was unclaimed and another letter was sent on July 15, 2007. Staff talked to Mr. Holm on July

20, 2007 and he stated he would not file the disclosures, would not pay the fine and hung up in the middle of the conversation.

Staff was asked at the June 11 meeting to check to see what options are available to collect the fine. Karla Schofield, Assistant Director LAA, stated if the individual was still employed by the legislature, the fine could be taken out of their last paycheck. APOC's process is similar to ours in that they send out certified letters. They have worked out payment schedules as well if the fine is significant or the individual cannot pay the entire amount up front. If an individual does not pay a fine, they refer the matter to the Attorney General's office. Their understanding is that the AG's office does not follow up unless the fine is \$500 or greater. Staff reported our policy has been to publish the names of individuals who do not pay their fines.

Committee discussed the options available: include Mr. Holm's name in the ethics newsletter and forward the matter to the AG. Member Turner indicated it would be troubling if the committee did not take any action and what kind of message would the committee be sending on the importance of filing disclosures. What about garnishing their PFD? Staff reported in order to do this a judgment is required. Representative Roses asked what about small claims court? Representative Roses agrees that the committee would be setting a precedent in whatever action is taken. Perhaps the answer is to increase the amount of fines so it would be worth going after. Senator Stevens stated the point is to file the disclosure, which Mr. Holm did, what is the point in pursuing the fine for so little an amount. Member Walker stated we do have a responsibility to follow up on the fine otherwise the fact disclosures are required could be ignored. Senator Bunde moved to refer the matter to the AG (after confirmation the AG is proper authority). The committee would be following the letter of the law and thus taking responsibility for pursuing unpaid fines. Staff will draft for the next meeting language for the committee's Rules of Procedure on this subject. Roll call vote taken: NO – Senator Stevens; YES – Senator Bunde, Representative Roses, Members Rabinowitz, Turner, Thomas, Walker and Chair Cook. Motion carried.

b. 2007 Standards of Conduct Handbook: Ms. Anderson reported the 2007 handbook has been distributed to legislators, LIO's, LAA, Office of Victims' Rights and Ombudsman, and Legislative Budget and Audit. There were several minor changes which will be noted in the next newsletter.

c. Ethics Training: Interim training will be held on Tuesday, October 2. Senator Stevens suggested that perhaps training be conducted during the special session in October.

d: Informal Advice Staff Report: The report covers October 1, 2006 through May 31, 2007. Ms. Anderson stated not all of the questions received are listed. Some are very routine. Senator Bunde mentioned there seems to be a growth of questions of minutia because of the current atmosphere concerning ethics and the concern of doing something wrong. Staff reported there has been an increase in the number of calls. Chair Cook mentioned one of our roles is training and answering questions. Senator Bunde suggested during training it should be mentioned the committee is not out to get them. Member

Walker suggested we include in training the committee must work within the framework the legislature set out and approved. Representative Roses believes the number of calls have to do with creating a paper trail.

5. ADVISORY OPINION 07-02: Use of legislative letterhead requested by Representative Mike Doogan

Dan Wayne, LAA legal, went over the draft opinion. The opinion was based on language in AO 84-4 which is still valid. He pointed out all uses of legislative letterhead of the type described in the request (character reference, letters of recommendation, letters of congratulation, condolences) had a legislative purpose and were not unethical. Legislative Council issued a policy in 1990 that the “unaccountable office plan” issued to legislators becomes their income and the legislature has no control how the money is spent. If legislative letterhead is printed with these funds, the letterhead may be used for a non-legislative purpose. The “accountable office plan”, controlled by legislative policy and AS 24.60, limits the use of letterhead for a non-legislative purpose. Representative Doogan explained he requested the opinion for two reasons: the difference in what legislative letterhead could be used for depending on the type of funds used to purchase the letterhead and the lack of direction on whether letterhead could be used for the described purposes. Representative Doogan stated he wanted to make sure he could write a letter of recommendation for a staff person if they were leaving his employ and needed a letter of recommendation. Discussion by members on the use of the two types of office allowance accounts. Chair Cook stated the committee is faced with the policy in place by Legislative Council and must issue advisory opinions as such.

Chair Cook referred to AO 94-02 which states in part, “...it is permissible for a legislator to write a letter of recommendation or otherwise communicate with an employer, including a political subdivision, concerning the qualifications of a job applicant of whom the legislator has personal knowledge.”

Member Walker made a motion to accept the opinion as drafted. Roll call vote taken: YES – Senators Stevens and Bunde, Representative Roses, Members Rabinowitz, Turner, Thomas, Walker and Chair Cook. AO 07-02 approved as drafted.

6. FIRST ALASKANS INSTITUTE: Request for approval of educational, internship program under AS 24.60.080(h)(2)

Memry Dahl, Leadership Development Director, gave a brief overview of First Alaskans Institute. The institute was established in 1989 by the Alaska Federation of Natives as a 501(c)(3). 100 native interns have come through their summer intern program. They now want to engage interns in the legislative process during the legislative session in Juneau. First Alaskans mission is to engage Alaskan natives in leadership development, community engagement, and research and public policy analysis. The institute was hearing more Alaskan natives are needed in the decision making process area.

Senator Bunde asked for an explanation of why the First Alaskans Institute needed to be before the Ethics Committee. Ms. Anderson explained AS 24.60.080(h) requires the committee review the contents of a program and approve if the services are used for

legislative purposes. The program places the burdens, for training, supervision and evaluation, on the legislative employer and the sponsoring organization. The relationship is an exchange of services rather than a gift of services.

Ms. Dahl stated their program would operate logistically similar to the University program presently in place. However, their program is non-academic and set up as a work experience program. Member Turner suggested First Alaskans talk to UAA or UAF to see if the participants could obtain university credit for the internship.

Senator Stevens asked if the NCSL Russian program had been approved by the Ethics Committee. Ms. Anderson indicated not to her knowledge. Senator Stevens suggested all internship programs be approved and perhaps the requirement for the committee to approve these programs be removed from statute. Senator Stevens stated Russian lawyers have been interns for the last 6 years. Their living expenses are paid by NCSL and he assumes they are also being paid a salary by NCSL. Senator Bunde posed the following scenario: what if a political party placed three interns in a legislative office and they only performed campaign work. The ethics committee should continue to approve internships programs.

Chair Cook asked Ms. Anderson to identify which internship programs are presently in place and report back to the committee. Certainly, internship program sponsors do not want to be inadvertently operating in violation of the statute. The committee will review this information and determine if any changes need to be made to statute or if other options are available.

Senator Bunde called the question. Representative Roses declared a conflict as he personally knows Ms. Dahl from when she was a teacher in the Anchorage School District. Senator Stevens declared a conflict stating his wife had been a long time director of AFN. Chair Cook noted these as disclosures and not a conflict for voting. Hearing no objection to the motion, program approved.

Senator Stevens stated he checked with staff during a short break and there are many more internship programs operating during the legislative session. He does not feel internship programs are a gift. Member Thomas suggested perhaps internship programs should be approved similar to the way "benefit and loan" programs are currently approved on a yearly basis.

7. ADVISORY OPINION 07-03: Lobbyists and Gifts, requested by the Ethics Committee

Dan Wayne, LAA legal, went over the draft opinion. A legislator or legislative employee may not accept a gift, other than food and beverage for immediate consumption or tickets to a charity event, from a lobbyist, regardless if the lobbyist is a family member of the person. A gift of food and beverage for immediate consumption may be accepted at a lobbyist's residence. A gift of incidental travel is prohibited. AS 24.60.080(a) now provides a very broad prohibition. A lobbyist may also not facilitate a gift of arranging travel for a legislative fact-finding trip if the facilitating has a monetary value.

Staff stated she believes the unintended consequence of changes to AS 24.60.080 prohibit gifts from lobbyist family members of legislators and legislative staff and recommends the statute be changed. Senator Bunde moved to have the committee make a recommendation to the legislature to change the statute to allow gifts from a family member lobbyist. Mr. Wayne pointed out the definition of family member in AS 24.60.080 is very broad. Senator Bunde's motion was deferred until action was taken on the opinion.

Member Thomas made a motion to accept the opinion. Further discussion held. Chair Cook posed the following scenario: A lobbyist would host a reception for a legislative employee at the lobbyist's residence. Informal advice previously given stated the use of the home would be considered a "service" to the legislative employee. If the home were to be provided, the employee would need to pay for the use of the home. Committee members agreed with this interpretation and felt no additional language was needed in the draft opinion. Roll vote taken: YES – all members present voted in favor of the draft opinion. AO 07-03 accepted as drafted.

Back to Senator Bunde's motion on suggested legislation. The first step is to define family member. Staff pointed out there are two definitions of family in the ethics code. One includes: spouse/domestic partner, child, stepchild, adoptive child, parent, sibling, grandparent, aunt and uncle and stepparent/sister, brother/grandparent/aunt/uncle of both the person covered by the code and their spouse/domestic. AS 24.60.080(5) The other definition includes only spouse/domestic partner, parent, child, stepchild, adoptive child or sibling. Senator Bunde preferred the more narrow definition. Representative Roses questioned whether a cousin could give a gift. The committee decided to leave the definition of family member to the legislature.

8. BLACKBERRY USE BY LEGISLATORS: The following LAA staff was on line for the discussion: Pam Varni, Executive Director; Karla Schofield, Deputy Executive Director; Jan Price, Procurement Officer; and Shay Wilson, Network Administrator. Ms. Varni gave an overview of authorizing the use of Blackberry's. Legislative Council approved the use of Blackberry's on August 17, 2007. This device will enable legislators to be instantly updated with calendar items, use the device as a cell phone and check their email on the Internet. The legislature secured a contract with the state. The hope is to distribute the Blackberry's during the special session. Ms. Varni would like to send out a memo to all legislators and include the guidelines from the ethics committee. Ms. Varni pointed out the phone detail (a listing of all calls) is not sent out. If a legislator went with the unlimited plan for cell phone usage within the state, there would be no point in sending out a detail of in-state calls. The only detail would be for either out of state calls or calls made internationally. If the legislator was on the nationwide plan, only international calls would be detailed.

Member Walker stated he did not want to micro-manage the legislature and asked for clarification of our role in this discussion. Chair Cook explained the use of state resources is governed by the ethics code. Further clarification of the use of state resources for personal use and/or campaign use is needed.

Senator Stevens asked if a legislator would be allowed to use the Blackberry for personal use. He currently has his own cell phone so he only has to carry one. Is personal use considered “di miminis” use? Ms. Varni felt the use of the Blackberry would be similar to the use of computers currently in a legislators office and ‘di minimis’ use is permitted. Ms. Schofield reported the IRS is saying personal use must be considered ‘di minimis’ if a business cell phone is provided. If the use is more than ‘di minimis’ the cost of the cell phone would be a taxable item and would be noted on the legislator’s paycheck. Ms. Schofield stated the State of Alaska has not developed a policy on this subject yet. Ms. Varni stated the legislature operates on the honor system and has reimbursement forms if someone were to exceed the Alaska plan usage.

Note: Ann Rabinowitz left the meeting at 11:35 p.m.

Chair Cook asked who would be paying for the ‘statewide’ plan at \$49.80 per month or the ‘nationwide’ plan at \$103.75 per month. Ms. Varni indicated the legislature would be paying these costs. Each legislator may choose what Blackberry options and cell phone plans work best for them. About 45 legislators have indicated they will probably take advantage of this offer.

Member Turner asked about forwarding a ‘yahoo’ account to the ‘legis’ account. The Blackberry will be set up with the ‘legis.state.ak.us’ email address. All email sent from the Blackberry will have the ‘legis’ email address. Another account, such as ‘yahoo,’ may be forwarded to the ‘legis’ account.

Representative Roses was concerned about the use of Blackberry’s on the house floor and opening up an avenue for a tremendous amount of influence on discussion of a bill that is supposed to be among legislators and only legislators. The rules of the body could address this issue. Rep Roses said he would not have his personal email sent to his legislative email address because he receives campaign related emails. Senator Bunde stated there is a positive side to being able to access email as well; such as being updated on meetings, etc.

Representative David Guttenberg (via teleconference) had questions concerning contracts; both personal and with the state. He is also concerned about campaign use. Right now about 80 % of his time is legislative related but come next year, during a campaign season, about 50% of his phone calls will be campaign related. Computer policy prohibits campaign use and the ethics code also prohibits the use of state resources for campaign use.

Senator Bunde stated it comes back to personal responsibility and a person’s common sense. Senator Stevens asked if a legislator could pay for the cost of the use of the cell phone for four months and then be able to use the device for campaigning. Ms. Varni stated she believed it was possible but would have to check on it.

Peggy Kerns, director of the Center for Ethics in Government at NCSL talked about what other states are doing in relation to technology. She indicated the latest challenge is the use of Blackberry’s and how they help facilitate the job of legislator but also how they create ethical issues unexpected a couple of years ago. The number one issue is ‘ethics and

technology' and states have not totally agreed on how to deal it. North Carolina is presently considering a policy on this subject. Ms. Kerns stated some legislatures have looked at this issue and determined it was a wash between using the Blackberry cell phone for personal use and keeping a log of calls to determine which ones were legislative related and personal. Another state was considering allowing the Blackberry cell phone for legislative business only but dropped that idea and based on the ethics commission recommendation is considering a defined period of time for calls considered campaign related. The options for states are: ignore the whole issue and the state pays for all calls, no Blackberry's will be issued because they only compound the problem, legislators have a personal cell phone and the state owned cell phone is only used for state business. The bottom line is that it goes back to someone's own ethical standards and trust. Ms. Kerns suggested including this topic in ethics training or orientation and stress this is an issue the legislature doesn't want to have bad press about. Whatever policy our state decides it must be workable, enforceable and practicable for the cultural climate in Alaska. This is not something that is going to be done easily or quickly. Ms. Kerns will check to see if any states have developed policy and let Ms. Anderson know. Further, Ms. Kerns said you don't want to set policy that will have unintended consequences. Look at our goal. It is not a perk. Ms. Kerns recommends a public relations program to let the public know that Blackberry's are being issued and they are appropriate. This type of program may prevent unfavorable comment by the public and press.

Ms. Varni would like to move ahead and send out a memo to legislators announcing the use of Blackberry's and some guidelines. Chair Cook does not feel the committee is ready to issue guidelines at this point. Ms. Kerns stated it is the ethics commissions in other states that are considering and issuing guidelines. She also stated some general guidelines, however, should be issued when the Blackberry is distributed.

Member Thomas agreed with Ms. Kerns that Blackberry's could be used for personal limited use but not for campaign use. Member Thomas and Member Turner recommended the "Cell Phone Accountable Property Form" be changed to reflect these guidelines.

Senator Stevens suggested the legislator be allowed for pay for 4 months of use during a campaign period. Ms. Kerns states it should be made clear, if this is permitted, that absolutely no soliciting of campaign funds is permitted.

Senator Bunde sees a public perception problem with the use of the Blackberry for raising campaign money. It is an abuse of the use of legislative resources and therefore prohibiting the use for campaigning is appropriate. Senator Stevens feels the definition of campaigning needs to be fully defined. He agrees with Senator Bunde in that campaign fundraising should be prohibited but does not see a problem with its use for general campaigning activities.

Representative Guttenberg asked if the legislator could own the Blackberry, the state maintained it and the legislature reimbursed the legislator for usage. During a campaign period, the legislator would not ask for reimbursement.

Ms. Kerns had two recommendations: review the policy in six months with legislator input and let the public know Blackberry's have been issued, what are the guidelines and include there will be a cost savings to the state.

Senator Bunde suggested staff prepare draft guidelines and forward to committee members for comment. Member Thomas liked the idea of a review in six months. Member Turner likes the policy in place.

Note: Senator Stevens left the meeting at 12:10 p.m.

Mr. Wayne, LAA legal, pointed out the committee could make a recommendation to Legislative Council but the committee does not make policy. The committee issues advisory opinions.

Senator Bunde made a motion the accountable property acceptance form should contain reference to Legislative Council policy on state cell phones and computers. Further, the ethics committee will review usage in light of Legislative Council policy and internally the committee would like to review the policy in six months. Member Thomas added cell phone use is for legislative business with limited use for personal business and the use for election campaign purposes is prohibited under AS 24.60.030(a). Hearing no opposition, motion carried.

9. OTHER BUSINESS: None

Member Thomas made a motion to go into a Full Committee Executive Session.

10. FULL COMMITTEE EXECUTIVE SESSION

Chair Skip Cook called the meeting to order at 12:35 p.m. EXECUTIVE SESSION. Member Thomas made a motion to go back into public session. No objections.

11. PUBLIC SESSON: Representative Roses made a motion to adjourn the open meeting at 12:45 p.m.