

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from February 24, 2009 FULL COMMITTEE MEETING Juneau, State Capitol, Butrovich Room and Room 120

1. Call the Meeting to Order: The meeting was called to order at 9:07 a.m. by Chair Herman G. Walker Jr. Members present: Senator Gary Stevens, Senator Tom Wagoner, Representative John Coghill, Representative Berta Gardner (arrived at 9:50 a.m.), Dennis (Skip) Cook, H. Conner Thomas, Gary J. Turner and Herman G. Walker, Jr. Representative Les Gara, alternate to Representative Gardner, was present from 9:07 a.m. to 9:40 a.m. Members Absent: Ann Rabinowitz. Staff present: Joyce Anderson and Dan Wayne, LAA legal. Chair Walker welcomed the new legislative members to the committee.

2. Approval of Agenda: Senator Stevens made a motion to approve the agenda as amended. Added to the agenda were: Item 10(d) Compensation for Public Members serving on the Ethics Committee; Item 14(a) Approval of JobX as an educational program; and Item 14(b) Legislative email addresses for Public Members. Hearing no objection, agenda approved.

3. Approval of Minutes: Member Cook made a motion to approve the following committee minutes: August 19, 2008 Full Committee minutes; August 19, 2008 House Subcommittee minutes; August 19, 2008 Senate Subcommittee minutes; January 7, 2009 House Subcommittee minutes; and January 16, 2009 House Subcommittee minutes. Hearing no objection, minutes approved.

4. ELECTION OF COMMITTEE CHAIRS: Chair Walker explained the positions of Senate Subcommittee chair and House Subcommittee chair are two year terms. The Senate Subcommittee chair is also the Full Committee chair for 2009 and the House Subcommittee chair is the Full Committee chair for 2010.

Member Cook nominated Member Turner for Senate Subcommittee chair. Unanimous approval by the committee. Chair Walker nominated Member Thomas for House Subcommittee chair. Unanimous approval by the committee. Member Thomas nominated Member Cook for Senate Subcommittee vice-chair. Unanimous approval by the committee. Member Turner nominated Member Walker as House Subcommittee vice-chair. Unanimous approval by the committee.

Chair Walker turned the gavel over to the new chair, Member Turner, to conduct the rest of the meeting.

5. Public Comment: None.

6. CHAIR/STAFF REPORT

6(a). Public Member Terms Expiring: Ms. Anderson reported the terms of Member Cook and Member Walker expired this year. The terms of members Rabinowitz, Thomas and Turner expire in 2010. Member Cook and Member Walker were re-nominated by Chief Justice Dana Fabe and have been confirmed by both the House and Senate to serve another three year term.

6(b). Publication of 2008 Advisory Opinions and Public Decisions: Ms. Anderson reported a booklet of advisory opinions and complaint decisions issued by the Committee was published and distributed to all legislators and other legislative offices prior to the beginning of the legislative session as required by statute. Four advisory opinions were issued in 2008. Three public complaint decisions were issued by the House Subcommittee in 2008. All advisory opinions and complaint decisions were included in the ethics newsletter, THE ADVISOR, as well.

6(c). 2009 Standards of Conduct Handbook: The handbook was updated and distributed to all LIO's, divisions within the legislature and all legislators offices. The section "Other Related Laws" now includes statutory language for all statutes referenced in AS 24.60; and the section "Advisory Opinions" now includes a line item listing of all advisory opinions from 1984 to present in numerical order and by subject matter.

6(d). Council on Governmental Ethics Laws (COGEL) conference: Member Walker and Ms. Anderson attended the December conference held in Chicago. Member Walker reported the conference was extremely beneficial and informative in his role as chair and as a member of the committee. Member Walker talked about some of the breakout sessions at the conference. He indicated each state has different statutory requirements when it comes to providing advice to legislators and staff. He commented that some states have a full time attorney assigned to legislative ethics. Member Walker and Senator Stevens encouraged all committee members to attend a conference in the future. The next conference is in December in Phoenix, Arizona. Travel funds are available for this type of travel. Ms. Anderson commented as well. She has since received information on a tracking system for informal advice and will follow up on this for possible use by our office. Rep Coghill asked about a template on statutory differences between states in the area of ethics. Ms. Anderson stated there is a database that is available to members to access as well a process for sending out a specific request for information and will follow up on these resources.

Rep. Gara commented the method of providing informal advice under AS 24.60.158 should be reviewed. A person should be able to rely on the advice without the possibility of having a complaint brought against them. He feels there is gap in our law. He suggested

asking other states what they do in this regard. He felt a middle ground was the use of an ethics attorney. Member Walker stated he had a conversation with the NY ethics attorney about this subject. Chair Turner asked Rep Gara if he felt all informal advice should be run through an attorney. Rep Gara indicated the advice should be advice that a legislator could rely on and is binding. Rep Coghill asked if informal advice was taken into consideration by the subcommittee when considering a complaint. Chair Turner said yes. The informal advice is reviewed based on the facts provided in the request. Rep Coghill further asked what if legal counsel and the committee disagree on the advice given. He feels a seated lawyer might be a complication to the committee. Sen. Stevens suggested this item be an agenda item for a future committee meeting. Ms. Anderson indicated she could poll the members of COGEL for input on how their state addresses this subject and report back to the committee.

6(e)(i). 2008 Ethics Training: Ms. Anderson reported ethics training was conducted in January for legislators and staff. Some legislators and staff have yet to attend a session. Eight legislators will receive training on Wednesday this week. Thirty-nine staff – seventeen staff to legislators and twenty-two support staff – has not been trained out of approximately 450 staff. Alternate methods of providing this training are being considered.

Rep. Gara left the meeting at approximately 9:40 a.m.

6(e)(ii). On-line Ethics Training: On-line training is one of the alternative methods being considered. Ms. Anderson reported two proposals were received outlining costs associated with producing an on-line training video.

The video would be in four segments to allow for ease of viewing during a busy legislative session. FOX 4, KTBV, Anchorage submitted a bid for \$1,660. KTOO, Juneau submitted a bid for \$2575. The particulars of the bid proposals were in the committee members packets. Member Cook made a motion to accept the proposal from FOX 4 in an amount of \$1660.

Rep. Coghill commented that during the 2007 legislative session when mandatory ethics training was being considered the concept of a video was suggested as an alternate method to in-person training. He also pointed out to the committee that for many legislators and staff the Ethics Committee is a mystery in how it operates and is not understood by all. He suggested including some information on this subject in the training video along with a FAQ section focusing on scenarios most commonly asked of ethics staff. Rep. Coghill also stressed how important it is to have face-to-face training sessions and a process for accountability. Sen. Stevens suggested using the same video for the two year session with changes to the affected sections instead of producing a totally new video. Ms. Anderson will follow up on this suggestion. Chair Turner said he has worked with Fox4 and they are excellent to work with and produce a good product. Chair Turner restated the motion; unanimous approval.

Chair Turner informed the committee Sen Bettye Davis will be unable to attend the make-up training tomorrow after originally indicating she was available due to two conflicts. He

asked for input from the committee on how to proceed. Sen Davis had suggested a one-on-one training but Ms. Anderson did not want to set a precedent for this type of training. Member Walker said it is the responsibility of the Speaker and Senate President to assure legislators attend training. The committee does not have any teeth to enforce training. Rep Coghill stated one of his committee meetings had been changed by the chair to accommodate the chair's attendance at the training session. Senator Stevens will talk to Senator Davis.

Rep. Gardner joined the meeting at 9:50 a.m.

6(f)(i). Electronic Filing of Disclosures: Ms. Anderson reported electronic filing of ethics disclosures was showcased in mid January, the week of ethics training. So far there has been about 50% compliance. She was hoping for a higher percentage but change takes time to implement. Ms. Anderson went over the process with committee members. Rep. Coghill suggested changing the page on the web site to make it more user friendly. He pointed out an error in the Board Membership disclosure process. Chair Turner suggested a FAQ section about each form which would be helpful in determining if the disclosure is required. Rep Gardner commented that 50% compliance is really very good.

6(f)(ii): Disclosures report: Ms. Anderson reported an updated list of ethics disclosures through December 31, 2008, is on the ethics web site. Late disclosures were filed by: Rep John Harris – first late disclosure; Rep. Ann Fairclough – first late disclosure; Sen Lesil McGuire – fine \$24.00 for third late disclosure; Rep Paul Seaton – first late disclosure; and Katie Koester – first late disclosure.

6(g). Staffing Update: Ms. Anderson reported Donna Grenier, support staff, is leaving employment on March 13. A job description is being developed and will be placed on Workplace Alaska. The description will focus on confidentiality and flexibility. The person will be required to sign a confidentiality agreement. The position is budgeted for 6 months or 975 hours during a fiscal year but there are no set hours. Ms. Anderson reported in FY 08 Ms. Grenier worked 574 hours - position budgeted for 4.5 months. In FY 09, Ms. Grenier worked to date 329 hours - position budgeted for 6 months.

6(h). State Benefit and Loan Review: Ms. Anderson reported all state departments were contacted in October 2008 asking if any state and benefit loan programs had been deleted, added or changed pursuant to AS 24.60.050. A letter and evaluation form was included in the committee member packets. All fourteen departments responded. The criteria for disclosing participation in a state benefit and loan program occurs when the loan or program is awarded on a discretionary basis. The following changes were made to the Department of Commerce, Community and Economic Development loans and programs: 1.) "Deferred Deposit Advances" under the Division of Banking and Securities moved from the "Loans" to the "Programs" section; and 2.) "Alaska Capstone Avionics Revolving Loan Fund" was added under Investments.

Ms. Anderson reported the University of Alaska, Land Management Division, was unsure if their "Real Property Transactions" program should be a reportable program. Ms.

Anderson went over the benefit and loan review form completed by the University. Chair Turner stated, based on the information provided, the land management program appears to be awarded on a discretionary basis. Rep Gardner stated it definitely should be disclosed. Member Thomas made a motion to include the program on the list of reportable programs based on the fact the program is administered on a discretionary basis. No objection, motion approved. Ms. Anderson will write a letter to the University notifying them of the committee's action.

6(i). Informal Advice: Ms. Anderson reported she has not had time to compile a staff report due to the workload at the beginning of each legislative session. Her hope is to have a report by late March.

7(a). Budget – FY 09 update as of February 18, 2009: \$94,458 out of \$206,400 remains in FY 09 budget. Staff expects there will be adequate funds to meet expenses through June 30, 2009. Only \$3,431 remains in the travel allocation. Staff pointed out if the budget amount is exceeded other funds are available to make up the shortfall.

7(b). Budget – FY10 request: Ms. Anderson reported the FY 10 recommended budget has no changes from the FY 09 allocation other than required personnel increases. Chair Turner asked if additional money in the area of travel was needed if an alternate member for public members was added to the Ethics Committee. He suggested the alternate member attend at least one meeting a year to process information and be up to speed on issues along with attending ethics training. Ms. Anderson stated no additional funds would be needed at this time.

8(a). Review of AS 24.60.080(a)(2)(B) – Sanctioned Charity Event: Chair Turner reported three legislators received tickets valued at \$375 to attend the Governor's Legacy Dinner. The dinner was approved by Legislative Council as a charity event. Ms. Anderson reported that legislators and legislative staff cannot receive a ticket to exceed \$250 for this purpose pursuant to AS 24.60.080. Pam Varni, Executive Director of LAA, reported she was under the impression that if the tickets were not from lobbyists the amount could be over \$250. Member Cook asked if the event was sanctioned or if the ticket amount was approved due to the fact the event was a charity. Ms. Varni stated the ticket was approved due to the connection to the charity event. Ms. Varni further stated this is the only time that she believes a ticket was over \$350 but wasn't sure and referenced the Kenai River Classic.

Senator Stevens, as one of the recipients of the ticket, stated he was part of the planning committee and received a ticket to attend in this capacity. No money changed hands.

Ms. Anderson reported AS 24.60.080(a)(2)(B) has been confusing since it was passed in 2003. The intent was to allow lobbyists to give tickets to charity events to legislators and legislative staff during the legislative session due to the many fund raisers held in Juneau and thereby maximizing attendance at charity events. However other groups have asked if their event can be sanctioned as well. Ms. Anderson suggested the statute be changed to allow tickets from anyone at any dollar amount as long as there is a disclosure when the

amount exceeds \$250 with the exception the cap of \$250 remain for at ticket from a lobbyist. Rep Coghill recommended Legislative Council make a legislative change in this area. Ms. Anderson reported she had a conversation with Rep Harris, chair of Legislative Council, and he is very much in favor of the recommended change. Rep Gardner asked if the Governor's Legacy Dinner was a fundraiser. Sen Stevens wasn't sure but probably not.

Rep Coghill made a motion that the committee ask Legislative Council to recommend a statutory change to remove the \$250 limit for sanctioned charity events. Rep Gardner questioned the role of a lobbyist. Rep Coghill did not intend to remove the \$250 limit for lobbyists. Rep Gardner would like to keep the \$250 limit and keep a level playing field. Rep Gardner felt Sen Stevens was there as an official member of the board and did not receive a ticket. Member Walker felt the legislature should make this decision and would support the motion. Roll call vote taken: Yea – Sen Stevens, Sen Wagoner, Rep Coghill, Members Walker and Turner. No – Rep Gardner, Members Thomas and Cook. Motion approved.

8.(b) Legislators who received tickets for the Governor's Legacy Dinner: Three legislators received tickets: Sen Stevens, Rep Chenault and Rep Holmes. Member Cook made a motion that no action be taken by the committee. Rep Gardner pointed out both Sen Stevens and Rep Chenault were members of the committee planning the event. Sen Wagoner pointed out only Sen Stevens was on the planning committee. Rep Gardner felt Rep Holmes receipt of the ticket was inadvertent. Motion unanimously approved.

9. Review of Exemption Positions: Chair Turner stated the last time exempt positions were reviewed was in 1996 and some positions have changed in "range" classification since then, some have been deleted and responsibilities have changed with quite a few positions.

Ms. Anderson gave the committee background information on the subject. AS 24.60.990 defines legislative employee. Employees who perform functions that are incidental to legislative functions are not considered employees for purposes of the Legislative Ethics Act. Some positions are exempt by statute such as print shop employees, maintenance department employees, and messenger and security positions. The committee, in 1996, further determined the positions in supply and those with classification "range 15" and below in legislative legal and research were also exempt.

Rep Gardner asked for clarification of what this means. Ms. Anderson reported that these positions do not follow any of the requirements under the Legislative Ethics Act. Rep Gardner was concerned about the financial disclosure requirements and Ms. Anderson stated only ethics disclosures were required.

Ms. Varni stated she was neutral on whether these positions should be included under the Legislative Ethics Act. Chair Turner pointed out the Procurement officer was not covered and he felt this position should be. Member Thomas asked if there were any changes that Ms. Varni was aware of. Ms. Varni indicated many changes have been made since 1996. NCSL reviewed all positions and made recommendations regarding title changes, range

and classification changes which were then implemented. Ms. Varni agreed with Chair Turner's recommendation to include managers. Chair Turner asked about the procurement officer. Ms. Varni indicated this position also works with legislative budget and audit, ombudsman and victims' rights divisions. Skiff Lobough, personnel director, pointed out that legislative affairs agency personnel are bound by a much stricter political activity policy than staff to legislators. Member Walker suggested including the print shop manager, procurement officer, building manager, and chief of security under the Legislative Ethics Act. Ms. Varni agreed this would be a good idea. Rep Coghill agreed with the suggestion. He further asked if this recommendation is based on a "range" category or on a "responsibility" factor. Ms. Varni indicated her recommendation would be based on a responsibility factor.

Rep Coghill made a motion to include the positions of those individuals who are managers in their respective sections as "legislative employees" for purposes of the Legislative Ethics Act. Member Cook pointed out the statutory language uses the term "incidental" functions and now we are saying they are not. Rep Coghill feels it is important that individuals in these positions hear what everyone else hears regarding ethics. Sen Wagoner suggested the discussion be tabled until the next meeting. Rep Coghill withdrew the motion.

Chair Turner asked Ms. Varni to come back to the committee with a recommendation on this issue. Rep Gardner asked for clarification if only ethics training and disclosures would be required. Ms. Anderson pointed out all requirements would be in place. Rep Coghill feels ethics training is essential and disclosures would be OK but other requirements may be over burdensome. Chair Turner stated he was concerned about not only influence with legislators but with outside individuals involved with the legislative process. Mr. Lobough will provide additional material on restrictions on political activity for the next meeting.

10. 2009 Suggested legislation:

a.) Constituent Services – Discussion for possible legislation: Chair Turner commented that during legislator ethics training this year and last year there was considerable discussion/debate regarding constituent services. Chair Turner suggested a definition of constituent services and constituent would be helpful to the committee when interpreting statutes.

Rep Coghill stated he had already requested legislative legal to research the following terms: personal use/private benefit, nonlegislative use and constituent services. He would like to have a bright line to provide clarification to those covered by the Act.

He believes a main component of constituent services is working with a government agency. This is also true of legislative purpose. Rep Coghill worked with Rep Doogan and Tam Cook, Director of LAA Legal, on this issue. He also talked to Rep Gruenberg. Legislation is forthcoming and will be provided to committee members for input. Rep Coghill mentioned the 2005 law regarding administrative law judges and how it changed the context of the method a legislative office uses to address constituent services.

Chair Turner asked if the definition of constituent is also being considered. Rep Coghill stated yes. He further commented that legislators typically make laws, keep a balance of power between the branches of government and represent an area of constituents.

Member Cook pointed out that it was the legislature who passed laws to restrict constituent services; i.e., private benefit and use of state resources. Rep Coghill stated legislators were surprised they had done this to themselves.

b.) Alternate Public Member – draft legislation prepared: Chair Turner stated he asked the question a year ago why public members did not have an alternate member on the committee similar to legislators. He agrees with what has been proposed with the exception that there should be two public member alternates instead of one.

Rep Gardner asked what is the benefit of two alternates. Ms. Anderson pointed out that recently two public members had to recuse themselves because of a conflict. She also pointed out AS 24.60 currently states if the legislative alternate member also has a conflict there is another provision for appointing another alternate. This option is not available for public members.

Sen Wagoner stated there is an expense associated with alternates and to do this would set a bad precedent. Rep Coghill stated if there is a legitimate conflict the public member should be able to recuse themselves from committees. Rep Coghill stated the alternate should hear the matter all the way through. Member Cook mentioned there may be a conflict of interest but it is more often when there is a scheduling conflict and meeting a quorum requirement for public members. Member Thomas stated the alternate would not be expected to attend every meeting. Ms. Anderson reported there have been meetings when due to circumstances a public member quorum was lacking. Member Thomas pointed out to the committee when public members have a conflict the weight of public members on the committee is taken away. Rep Coghill stated pressing matters may be hindered because of a lack of a quorum. He feels there should be only one alternate member because of the burden placed on this person with scheduling issues.

Member Walker made a distinction between what the ethics committee does versus the legislative body. The ethical dilemma where someone has to sit in judgment and the appearance of impropriety is a higher standard versus when the legislature makes the legislator vote on the floor.

Sen Wagoner made a motion to accept the legislation as written that adds one alternate member as a public member. Motion approved.

c.) State paid travel and incidental/nominal campaign activity: This item was tabled from the August 19, 2008 committee meeting. Chair Turner suggested this item be tabled due to the complexity of the issue. Rep Coghill asked if this was a time sensitive issue. Chair Turner stated no. Member Thomas asked why this item was still on the table. Ms. Anderson stated recommended legislation in this area was the issue. Rep Coghill made a

motion to table the item to be placed on a future meeting agenda at the direction of the chair.

10(d). Compensation for Public Members on the Ethics Committee: Chair Turner asked Ms. Anderson to explain this item. Ms. Anderson reported APOC commissioners currently receive \$50 per meeting. SB 113, introduced by Sen Meyer, is increasing the compensation for APOC board members to \$150. APOC asked the ethics office for input on preparing a comparison/contrast list of the duties of APOC members and ethics committee members. Ms. Anderson brought this item to the attention of the chair.

Sen Wagoner stated he has served on various boards and commissions without compensation. He would like to know which ones receive a stipend for serving. Rep Coghill stated legislators are in the awkward position regarding their own salary this year. Perhaps the ethics committee would be under the same cloud if they made a recommendation on this issue. He asked how much time and effort is put in by committee members as this is an important factor. Rep Gardner doesn't feel a report is necessary because even if one day is spent on ethics committee matters that is enough. Sen Wagoner and Members Walker and Cook stated the committee should not take a position on this issue. Sen Wagoner indicated most serve because of public service.

No action taken on this item

11. Advisory Opinion 08-05 Use of state resources for non-legislative meetings, requested by the Ethics Committee: *Group A meets on a weekly basis during legislative sessions in one of the Capitol legislative committee rooms. They meet at an early hour to avoid a conflict with legislative committee meetings. An email announcement prior to each meeting, along with an agenda, is sent to approximately seventy-nine possible attendees. Group A is affiliated with an international advocacy group, maintains a web site and is mentioned in several national newspaper and magazine articles. Members of Group A include current and former legislators and legislative staff, current and former executive branch elected officials and employees, lobbyists, friends, family members and others from all walks of life.*

Does the weekly use of a legislative committee room in the Capitol by Group A

- 1.) violate the prohibition on the use of state resources and facilities for a non-legislative purpose and/or for the private benefit of the legislator, legislative employee or another person?*
- 2.) constitute a permitted use of state resources for personal purposes?*

Dan Wayne, LAA Legal, gave an overview of the opinion. The legislature as a body is not prohibited by the Legislative Ethics Act from allowing a person to use the capitol building even if there is private benefit conferred. However, there may be other issues such as constitutional or legal prohibitions. The distinction is that an individual legislator or legislative employee may not do so if there is a private benefit. Member Thomas asked for additional clarification. Mr. Wayne stated a group who wants to give a demonstration to a legislative committee regarding an issue or product is permissible.

Rep Coghill wanted to clarify some of the facts presented in the request. Group A is not part of an international group and if the name appears so it is purely incidental. Also, the 79 prospective participants is only for notification purposes. They do not all attend. Rep Coghill mentioned the Women's Caucus, which has no other purpose than women meeting, is not so much different than Group A which meets on a faith basis. Mr. Wayne gave these examples: a legislator or staff member uses a room to have a meeting and pray or talk about other issues that they share in common is probable OK but to say to a group that you can use this room to hold your meetings or sell your product is different. Rep Coghill mentioned pizza from a farming group, University students giving out ice cream as other examples. Mr. Wayne clarified the personal benefit is to the group and not the person who goes to the room or gets the ice cream. Rep Gardner gave the example of reading a book with office staff and then they decide to expand the group to include persons who are not legislators and legislative employees – is this OK. What about a boy or girl scout group meeting in a capitol room? Where is the line drawn? With the ice cream and pizza example there is personal benefit but they are pursuing a legislative agenda. Rep Coghill questioned if the University should be allowed to use a room in the capitol to lobby which is a benefit to them.

Rep Coghill stated the purpose of Group A was to involve members of Group A, i.e., legislators and legislative staff for a legislative purpose and allow other people to join. Sen Wagoner stated a senator from Group A announces the meeting date and time on the floor of the senate. If some legislators are involved then he sees no reason why it cannot be allowed. Rep Coghill stated a former staffer associated Group A with an international group. He even questioned the sincerity of legislators being able to talk frankly with other individuals attending. Rep Coghill indicated the meetings have been held for some time and actually started when Joe Hayes was in the legislature.

Member Cook asked just because a legislator is a member of the group does this factor alone allow Group A to meet in the capitol. What about a rotary group for instance? He feels there would be an equal access problem. Member Walker asked if a legislator gets the group together then there is a legislative purpose which is to support one another and state resources can be used. Member Cook wouldn't have a problem if the legislature had a policy on this issue. But when it gets to the point that it is publicized outside of the legislative arena then he sees a problem with legislative purpose. Chair Turner asked what if a legislator was a member of a church group; would the church then be able to meet in the capitol. Rep Coghill agreed that this is not appropriate.

Sen Wagoner questioned the Key Campaign when they come to lobby and use a room in the capitol. What about the Children's Caucus? These groups are not part of the legislature but they still meet in the building and definitely provide information to the legislature. Rep Gardner posed this scenario: what if three legislators are part of a group then the three leave for a meeting. Would it be permissible for the rest of the group to meet in the capitol. Rep Coghill indicated this has occurred with Group A. Member Walker sees a distinction between the Key Group and the Children Caucus. They definitely have a legislative purpose. He is struggling with a legislative purpose for Group A. He sees this situation as opening the door of the capitol for everyone else to use it. Rep Coghill

indicated that they stay away from the subject of legislation purposely. When people of a like mind have a moral base there is a legislative purpose. He wanted to clarify there have been times when only three members met and there have been a few time when there were thirty.

Mr. Wayne stated the opinion is a correct statement of the Legislative Ethics Act based on the facts presented. If the facts have changed the opinion does not apply. Mr. Wayne stated there may be other legal or constitutional issues but there would be a legislative purpose for a group of legislators (3 or 30) meeting. It would be similar to having a pizza party or a meeting with food/coffee and not talk about work. Member Walker asked about bringing other people from the outside. Mr. Wayne could see this scenario as a slippery slope issue. He posed these examples: If a legislator invited the ski club to attend our meeting it would probably be OK. If the ski club invited its members to a meeting in the capitol that would be different.

Sen Wagoner asked if state email was being used to notify members of Group A about meetings. Chair Turner indicated yes but the group was notified to discontinue use of state email. Rep Coghill also asked the group to discontinue use of the international name. (note: the group is now called "Alaska Fellowship")

Ms. Anderson clarified for the committee that Group A did have a web site and the web site was linked to the international group with the same name and the international web site mentioned the Alaska group. The Alaska web site has since been deleted. Rep Coghill stated when he found this out he asked the legislator to remove the connection and the use of the name as it was problematic.

Mr. Wayne pointed out AS 24.60.0309(a)(2)(H) allows reasonable use of the internet which may possibility be interpreted to mean use of email as well. Rep Coghill stated he found staff was also being used to prepare the email and send it out and he felt this practice should be discontinued and told the legislator so.

Rep Coghill stated there is difference between process and ethics. Others should be allowed to be invited as they do not control the meeting. Member Cook stated he has no problem with legislators meeting in the capitol and inviting others to join but when there is a public invitation to others then he sees a problem. Rep Gardner agrees the original facts are not appropriate. Rep Coghill again stated a legislator must be in charge of the meeting and not group.

Member Thomas made a motion to withdraw the opinion and revisit with revised facts. Chair Turner asked if this then means Group A can meet in the capitol. Sen Wagoner asked if there is a facilities use policy and if so why is the ethics committee looking at this issue. Ms. Anderson will pull the policy. She stated the focus of the policy is related to political party activity. Member Cook would feel better if there was a policy on reserving the use of rooms. Member Walker states it is appropriate for the ethics committee to look at this issue in relation to legislative purpose and private benefit.

Roll vote taken: Yea – Sen Wagoner, Rep Coghill, Rep Gardner, Members Thomas, Walker, Cook and Turner. Absent – Sen Stevens.

Meeting recessed at 12:50 p.m. Meeting moved to Room 120. Back in session at 1:13 p.m.

12. Advisory Opinion 09-02: Newsletter Parameters, requested by Sen Kevin Meyer:

(1) How and when is a legislator permitted, under the Legislative Ethics Act, to publish a newsletter jointly with another member of the legislature; (2) How does the Select Committee on Legislative Ethics define the term “constituent” as it pertains to the distribution of newsletter by a legislator; and (3) How does the Select Committee on Legislative Ethics define the term “legislative purpose”?

Mr. Wayne reviewed the draft with the committee. Mr. Wayne stated this opinion has no legal effect on the Determination of Probable Cause, House Subcommittee Complaint H 08-03. The opinion has been drafted in a general way since there were no specific facts presented in the request. Constituent has been defined as “a natural person residing within the legislator’s district” in a previous opinion issued by the committee, AO 04-01. Legislative purpose is subject to an interpretation that is “the most persuasive in light of precedent, reason and policy.” Several other sections of the Act are referenced in the opinion but since no specific facts were asked only general statements can be made. Mr. Wayne referenced AS 24.60.160 which states there must be “facts and circumstances of the particular case.” He stated it is difficult to draft an opinion when there are not specific facts.

Sen Stevens and Rep Coghill both commented they represent the entire state of Alaska and not just the constituents in their legislative districts. He feels we are slicing the interpretation too thin. Member Thomas commented that Rep Meyer should be asked to submit a request with more specific facts. Member Walker asked Sen Stevens about his thoughts if a joint newsletter was sent during a campaign period and the legislator was running for a statewide office or a senate district. Rep Coghill suggested the legislature address this issue. Rep Coghill stated if the time frame was within a campaign arena then it would be a problem but if it was out side of the campaign arena and issue related and both districts were involved then it would be legislative related. There may be times where both of these factors are prevalent and the campaign issue is the barrier issue.

Rep Coghill left the meeting for a 1:30 p.m. meeting.

Rep Gardner stated the questions asked are not specific and therefore does address the scenarios previous posed. Member Thomas moved to take no action on the advisory opinion request and ask Sen Meyer to make his request fact specific. Mr. Wayne pointed out that the request may be the same facts as presented in Complaint H 08-02 which invites a comparison of the committee’s action on the two. Chair Turner indicate the logical action would be to reference Complaint H 08-02 decision. Mr. Wayne stated the committee would no longer have the option to not issue an opinion based on lack of

specific facts. Member Walker stated Sen Meyer may not want to come back with another request.

Ms. Anderson indicated there have been questions received regarding newsletters since the complaint decision was issued. Legislative offices want guidance. Ms. Anderson offered to provide a list of fact specific questions. Member Walker stated if Sen Meyer does not request another opinion perhaps the committee should submit a list of fact specific questions. Member Thomas commented that with the facts presented in Complaint H 08-02 the committee could not find a legitimate legislative purpose.

Ms. Anderson stated the following: sending a newsletter to postal districts which do not correspond to legislative districts. The mailing is for convenience. Advice given to the legislative district was to go ahead and send the mailing. Sen Wagoner stated there is a way to do this without too much work and it is done when campaigning. Mr. Wayne offered this example: a fisherman is allowed a certain amount of “by catch” and it is legal; however if the fisherman uses equipment or sets his nets to allow more “by catch” than is usual then the fisherman would more accountable. The same analogy and process can be used for sending out newsletters.

Roll call vote: Yea – Sen Wagoner, Rep Gardner, Members Walker, Cook, and Thomas and Chair Turner. Absent – Sen Stevens and Rep Coghill.

15 OTHER BUSINESS: (Note: Chair Turner moved to Item 15. Item 13 and 14 will be discussed following conclusion of Item 15.)

a.) JobX Internship Program: Chair Turner explained to the committee JobX is requesting they be approved as an internship program under AS 24.60.080(h). Aurora Hauke, from Rep Kerttula’s staff, explained the program. There are monitoring requirements for both the legislator’s office and at JobX which are requirements under statute. Member Cook make a motion approve the program. Hearing no objection, motion approve. Absent: Sen Stevens and Rep Coghill.

b.) Email addresses for public members: Ms. Anderson reported public members need email addresses to file disclosures on-line. A letter to Legislative Council is needed for approval. Public members asked to only have the email address for on-line filing and no “in box” to receive other notices within the system. Ms. Anderson will follow up.

13. Advisory Opinion 09-02: Sen Wagoner made a motion at 1:52 p.m. to go into EXECUTIVE SESSION to discuss an advisory opinion request that is confidential pursuant to AS 24.60.160(b). All members present. Member Thomas made a motion at 2:25 p.m. to go back into Public Session. No objection.

14. Public Session: Rep Coghill made a motion to have Mr. Wayne draft another opinion based on discussion in Executive Session. Roll call vote: Unanimous.

16. ADJOURN: Sen Wagoner made a motion to adjourn at 2:26 p.m.