

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from January 19, 2011 FULL COMMITTEE MEETING State Capitol, Butrovich Room

- 1. CALL THE MEETING TO ORDER:** Chair Conner Thomas called the meeting to order at 12:35 p.m. Members present: Senator John Coghill, Senator Gary Stevens, Gary J. Turner, Skip Cook, Toni Mallott (arrived at 12:40 p.m.). Staff present: Joyce Anderson, Administrator. Also present: Dan Wayne, LAA Legal Counsel. Absent: Herman G. Walker, Jr. Chair Thomas explained the House nominated House members to the Committee but did not confirm the appointees by a floor vote yesterday. Therefore there are no House members on the committee. The appointees are: Rep Carl Gatto, alternate Rep Craig Johnson, Rep Berta Gardner, and alternate Rep Chris Tuck. Rep Chris Tuck was present.
- 2. APPROVAL OF AGENDA:** Due to the fact there are no House members on the committee, the House Subcommittee meeting scheduled to follow today's meeting was canceled. However, there is a quorum to proceed with today's full committee meeting. Chair Thomas asked if there were any objections to the proposed agenda before them with the addition of **Item 8g, Rules of Procedure**. Member Turner motioned to approve. There were no objections and the agenda was approved.
- 3. WELCOME NEW LEGISLATIVE MEMBERS:** Chair Thomas welcomed new and returning members to today's meeting and thanked all for their service and continuation of service. The Chair recognized Rep Tuck as a new alternate for Rep Gardner and announced that Sen Donny Olson would also be serving as a new alternate for Sen Coghill.
- 4. APPROVAL OF MINUTES:** Chair Thomas requested a motion to approve the minutes from the Full Committee meeting held on June 16, 2010, and House Subcommittee meetings held on November 23, 2010, and December 13, 2010. Motion to approve was made by Member Cook. There were no objections; motion passes.
- 5. ELECTION OF COMMITTEE CHAIRS FOR 2011/2012:** Chair Thomas noted that committee chairs must be public members per AS 24.60.130. Member Cook has agreed to serve as Senate Subcommittee Chair and Full Committee chair for 2011, if elected.

Member Turner nominated Member Cook. Unanimous vote. Chair Thomas announced his willingness to serve as Vice Chair of the Senate Subcommittee if nominated. Member Cook nominated Chair Thomas. Unanimous vote. Chair Thomas announced that Herman Walker, although not present today, stated his willingness to serve as Chair House Subcommittee and Full Committee chair for 2012. Member Turner nominated Herman Walker. Unanimous vote. Chair Thomas announced that Gary Turner expressed his willingness to serve as Vice Chair House Subcommittee. Sen Stevens nominated Gary Turner. Unanimous vote.

6. PUBLIC COMMENT: No comment.

7. CHAIR/STAFF REPORT:

- a. Ethics Training - Chair Thomas referred to the yellow sheets in the packet and handed the floor to Joyce Anderson. Ms. Anderson stated that training this year is mandatory. There have been 7 training classes conducted so far. Two of them were for legislators. Two in-person classes this week remain. The online training video has been taken off line since in-person training is currently being offered. The video will be re-activated at a later time. No changes will be necessary to the online training video as there were no statutory changes at the last legislative session. The Standards of Conduct Handbook was updated to include changes regarding “newsletters” and “campaigning-use of state resources” issues. A handout was provided at training for legislators pertaining to “Communication with Constituents” focusing on newsletters and campaign related concerns in newsletters. The two remaining in-person classes will accommodate new staffers and returning staffers. Two additional training dates to accommodate those unable to attend in Juneau are scheduled for February 1st and 3rd by teleconference.
- b. Internship Approval Update - Ms. Anderson provided a summary of this item. Internships must be approved by the committee under AS 24.60.080(h). The committee created new procedures in June 2009 that have since allowed Ms. Anderson authority to approve programs after consulting with the Chair of the Ethics Committee. This change in procedure has expedited the process. Prior to 2009, four internships were approved. In 2010, the Chair and Ms. Anderson reviewed and approved two; DePaul University and Tlingit/Haida Tribal Vocational Rehabilitation (TVR) Program. This year, two internships have been approved; IDEA (Individuals with Disabilities Education Act) Alaska Close Up Program and MASST (Mature Alaskans Seeking Skills Training) Intern Program. Notifications were sent to the full committee as well as legislative offices.
- c. Office Purchases - New office furniture was purchased to replace old and outdated furniture for support staff person. Support staff position is now a permanent 60% time position and furniture that it is ergonomically correct was necessary.

- d. Office Update - The Ethics office is in the process of implementing an Electronic Management Activity Log database. The database will be maintained in-house. The database will allow input of calls received and advice provided. Reports will be generated for statistical purposes as well for the Staff Report provided at committee meetings. Sen Coghill asked if there were any programs purchased. Ms. Anderson responded that the Legislative IS Department is developing the database for us using Access, a program already on State computers. It will be secured with a password to which only she will have access; staff will have limited access for input of staff calls into the database. Only the Administrator will have full access to the information in order to maintain confidentiality. The database will allow Ms. Anderson to search for previous advice provided using a keyword search engine. Ms. Anderson anticipates data entries to begin this year.

Additionally, with a permanent staff person working Monday-Wednesday, Ms. Anderson is working on consolidating files in the office to better access the information.

- e. Ethics Disclosures - A report of late disclosures was provided in the packet dating from the last committee meeting on May 28, 2011 through the present day, January 19, 2011. Rep Tuck, Gene White, and Amy Seitz received their first late disclosure; no fine. Sen Olson was fined \$52 for his second late disclosure. Sen Dyson was fined \$100 for his third late disclosure. Sen McGuire was fine \$6 for her fourth late disclosure. Ms. Anderson also provided the members an analyses prepared by her staff person showing the majority of disclosures that are filed late are “Gift of Travel/Hospitality” disclosures, which supports Sen Stevens’ interest in extending the number of days to disclose from 30 days to 60 days from the start of travel. In 2007, 13 of 18 late disclosures were “Gift of Travel/Hospitality” disclosures, which was a campaign year. In 2009, 14 of 24 late disclosures were also “Gift of Travel/Hospitality” disclosures, and a campaign year. In 2010, 5 of 14 late disclosures were “Gift of Travel/ Hospitality” disclosures. Chair Thomas noted that more discussion on this topic will follow later in the meeting.

Ms. Anderson provided a handout showing a comparison between Ethics required disclosures and APOC’s required disclosures. There are three categories in which both require the same filings: Close economic associations, contracts and leases, and membership on a board of directors. Legislators are required to file these on their financial disclosure to APOC, as well as to Ethics. The deadline for APOC is annually, whereas the deadline for Ethics is 30 days from the beginning of the association and then again annually. As noted on the handout, some legislators have disclosed their membership or close economic association or contracts & leases with APOC but not with Ethics and vice versa. These disclosures are required by both entities at different times for different time periods and both disclosures provide the public with pertinent information. Staff would not recommend changing these requirements. The Ethics office will send out a reminder to legislators highlighting the dual reporting requirements.

- f. Website Update - Ethics has posted a calendar on the Ethics website which provides deadlines for reporting requirements. Also, new to our website, is the ability to subscribe to our newsletter, The Advisor, in addition to accessing them directly. We have also added an explanation of how to request an advisory opinion. The audio of 2010 committee meetings can now be found on BASIS, in addition to the minutes. We anticipate adding 2009 audios as well. The office is presently working on an historical perspective of the Ethics Committee, including ethics legislation, and hopes to add to our website in the near future.
- g. Informal Advice Staff Report - The report is incomplete but forthcoming at a later date. Staff was unable to compile the report due to other pressing duties.
- h. Campaign Period Oversight Activities - The Ethics office has been more “pro-active” than “re-active,” especially in the area of campaign period oversight activities, to help prevent legislators from possible ethics complaints. For example, various legislators’ campaign websites were reviewed for language about soliciting contributions during a legislative session, which is a prohibited activity. Nine legislators either had a “contribute” button or contribution language on their websites. They were all notified by the Ethics office and subsequently removed the language.
- i. APOC forms – Changes implemented based on Ethics Input – Another proactive approach was reviewing legislators’ “letters of intent” and “registration forms” submitted to APOC to determine if any legislative contact information, such as phone numbers, email addresses, fax numbers, etc., were on either document. Seventeen legislators were notified by the Ethics office via a letter to contact APOC to have legislative contact information removed.

APOC has since modified their forms to include reminders of these two issues. Sen Coghill commented on how easy it is to inadvertently use your legislative information on these forms and was appreciative of the efforts made by the Ethics office and APOC.

APOC also added language to the Legislative Financial Disclosure (LFD) forms (annual filing required by all legislators) stating that legislative filers are not required to report gifts valued over \$250, except to Ethics. Staff had asked the question of APOC since it was not a requirement in the past but only recently and their appeared to be no change in statutory language. APOC indicated when the forms were changed several years ago it was inadvertently added to the LFD. Sen Stevens stated he appreciated the efforts in eliminating duplication. He also posed the question if APOC and Ethics shared information. Ms. Anderson responded yes, and provided an example, such as when a legislative staffer is married to a lobbyist and files an ethics disclosure. A copy of the disclosure is sent to APOC. Some duplication is unavoidable due

to the fact that APOC is about “financial” reporting and Ethics is about the public’s right to know and timeliness of that information. Sen Coghill recommended to everyone to read the Ethics newsletter which provides reminders of what’s due and when.

- j.** Discussion Item - Suggest meeting with APOC on overlapping issues - Chair Thomas asked members for input on whether a meeting with APOC on overlapping issues would be a good idea. Sen Coghill indicated it would be a good idea since laws sometime change and may affect both agencies. Sen Coghill suggested a July or August meeting. Member Cook suggested that some of the committee members meet with APOC versus all of the committee members. Chair Thomas stated he thought it seemed reasonable to him. Member Turner asked if it were feasible to ask APOC to meet with them before or immediately following the next scheduled committee meeting. Sen Coghill questioned if it were feasible to meet during legislative session when other legislators could attend if they wanted. Ms. Anderson suggested maybe their chair and a few of their staff and some of the Ethics members have a preliminary discussion to determine the items for discussion and then make a determination on who should attend the actual meeting. Ms. Anderson suggested that a preliminary meeting to provide each other information on their agency and procedures may also be beneficial. Sen Coghill suggested bringing other legislators into the discussion. Chair Thomas asked Ms. Anderson if she had spoken to APOC about scheduling a meeting with them. She stated she had mentioned it to the Juneau administrator, who thought it was a good idea, but Ms. Anderson stated she wanted to get the committee’s input before proceeding any further. Ms. Anderson stated that APOC’s Executive Director Holly Hill was resigning February 1, 2011, and felt it might be a good idea to wait until a new director was in place. Chair Thomas stated that since all were favor of a preliminary meeting, he suggested Ms. Anderson contact APOC and see if they are interested in a preliminary meeting along with two or three committee members and bring it up at the next meeting.
- k.** Committee Member Vacancies 2011 - Chair Thomas stated that there were no public member terms expiring this year.
- l.** COGEL Conference Update - Ms. Anderson, Member Herman Walker and Rep Gardner attended the conference in Washington DC in December 2010. Ms. Anderson stated that the conference was well attended and the overall feeling was that there were some states that were in the midst of proposing ethics legislation based on issues that have come up in their state similar to what happened in Alaska with the FBI indictments. Some states were in a “slow down” mode where there is no proposed ethics legislation. Ms. Anderson stated she attended “Ethics Enforcement-How to make it work.” Ethics committees are not waiting for things to happen but are being pro-active. There is more interaction with legislators as an information resource. Some committees did not issue newsletters but the panel felt it was a great tool as a resource for

information and a vehicle for notification of issues addressed by an ethics committee. Ms. Anderson also attended “Engaging the Public through Social Networking”, however; felt it was quite advanced and very technical and not especially useful. There were discussions on Facebook, My Space and Twitter. It was her feeling that a lot of states are entering into the social networking area which is a brand new field for them and are unsure of where this new technology is taking them. It is a hot topic and seems to be continuing in that direction. The next COGEL conference will be held in Nashville and will probably address this topic in more detail. Sen Stevens asked if Ms. Anderson thought there were ethical issues regarding the use of Facebook. Ms Anderson stated that subject was brought up in discussions at COGEL. Sen Stevens noted that this was timely information since legislators have engaged staff to help legislators move into Facebook. Many legislators in other states are using Facebook. At this time Legislative Council has not allowed Alaska legislators to access it through the state system. He suspected that as it continues to be a topic of discussion, it could develop into legislative sponsored Facebook. If Ms. Anderson can find out if there are ethical concerns regarding Facebook, he would be interested in knowing them. Ms. Anderson will research ethical concerns regarding Facebook through COGEL’s Q/A process. Member Turner asked if Ms. Anderson would be willing to look into whether there is a potential for a legislator having a Facebook site and then a campaign Facebook site. Sen Coghill stated that when he was on Legislative Council, he stated there were three major issues of concern; one being bandwidth, second, the use was not state sponsored, and third, the ethical issue, for example, what is the purpose for using it. Example: will it be used for campaigning, making contact with others, etc. The appropriateness of its use was discussed. Staff time was also a concern; controlling time spent by staff on Facebook is difficult to do. How do you determine what’s reasonable and what’s excessive. It may be easy to control what you put out there, but it will be very difficult controlling what comes in.

Ms. Anderson also reported that one of COGEL’s round table discussions included comparing the effectiveness of Ethics procedures in other states. The majority of Ethics Committees consisted of legislators and most liked the idea of Alaska’s committee with five public members and four legislators. It was also Ms. Anderson’s understanding that some Ethic committees were relatively new and were in the process of gathering information from other agencies as they developed their policies.

- m. Publication of Advisory Opinions and Public Decisions AS 24.60.150(a)(3) –** Two booklets, one for advisory opinions and one for the public decisions, have been distributed to all legislative offices, LIOs and legislative library. The Senate read them into the record on Tuesday, and the House will do so on Friday.

- n. State Benefit and Loan Program Review - AS 24.60.050(b) - Ms. Anderson provided an overview of the review. One change made was the Department of Transportation and Public Facilities deleted the “Alaska Cooperative Transportation & Public Facilities Research Program as it no longer exists.

The Department of Commerce, Community & Economic Development requested deleting all of their programs listed under the Division of Banking and Securities because the division regulates and licenses lenders and does not offer benefits or loans. More documentation was requested in a letter to Ms. JoEllen Hanrahan at DCCED. However, no additional information has been received. Until documentation is provided, Ms. Anderson recommended these programs remain on the list. No action from the committee is necessary at this time. The committee took no action on this item.

8. RULES OF PROCEDURE-suggested changes: Ms. Anderson presented a 42 page document providing background information for the proposed changes to the Rules of Procedures.

- a. Section 4, meeting/Notice: Motions - Ms. Anderson stated that the addition to this section was prompted from a recent request from a committee member who asked for a reconsideration of a vote. Chair Thomas researched the process used by the Alaska Legislature, referenced Mason’s Manual of Legislative Procedures and Roberts Rules of Order, and LAA Legal advice. He subsequently followed a combination of all these procedures. Ms. Anderson further learned there was a process drafted in 1997 but never adopted by the committee. The draft language before the committee today incorporated the above referenced items and the 1997 draft. Members decided to table this item due to its complexity and bring the item to the committee when there is sufficient time for discussion.
- b. Section 7, Committee Materials/Correspondence: Minutes - Ms. Anderson stated she has received phone calls from the public asking why Ethics Committee minutes were not available online in a timely manner. Presently, minutes are not put online until they are approved at the next committee meeting. Sometimes the committee does not meet for 6 months. This does not give the public timely information or “the right to know” what happened at a committee meeting. Ms. Anderson recommends sending a draft to committee members for review and comment. Once the draft is reviewed and there are no additional changes, the minutes would be published online as a “draft.” The “official” approved minutes would be published on-line the next working day after approved at a public meeting of the committee. A motion to approve the procedures was made by Member Turner. No objection. Motion passes.
- c. Section 9, Informal Advice, Disclaimer - Ms. Anderson recommended adding language to the disclaimer already noted in the Rules of Procedure found on page 19 of 42, (c)(3) of the handout. The new language is taken from AS 24.60.165 and provides the person calling for informal advice some protection even though it is not binding on the committee. For example, if a person called and Ms. Anderson gave him/her informal advice and the committee disagreed

with the advice she gave out, and the person has since acted upon her advice, the person is protected until Ms. Anderson has been able to contact the person with the advice recommended by the committee. Members decided to also add the second sentence of AS 24.60.165, which states, **“This section does not preclude the committee from acting on the complaint concerning the subject of a person’s request for advice if the complaint is brought by another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the committee from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.”**

Member Cook motioned to approve adding Sec. 24.60.165 in its entirety to the disclaimer. No objection. Motion passes.

- d. Section 9, Informal Advice, Seeking advice for someone else – Ms. Anderson stated this change is recommended because she occasionally receives calls asking for advice on the actions of someone else. Members discussed the proposed language and modified it to read, **“The Ethics Administrator does not provide informal advice when someone is requesting advice regarding the actions of another.”** Committee members felt the recommended language was too long and the above language accurately reflected the committee’s intent. Member Turner motioned to approve the language stated. No objection. Motion passes.

2:25 p.m. Members took a 15 minute break.

2:40 p.m. Members reconvened. Senator Stevens had another meeting to attend at 3:00 p.m. Chair Thomas moved to Item 9, which required a vote.

- e. Section 13, Potential Complaints, Heads Up Policy - Chair Thomas referred to page 23 of 42 in their packets. *Note:* It says Item 9(e) but is actually Item 8(e). The Chair and Ms. Anderson provided some background as to why this Heads Up Policy is brought forth today. Basically there was a question regarding this procedure from a legislator in relation to a fact specific scenario and Chair Thomas requested a legal opinion from Brent Cole. Ms. Anderson read from the legal opinion where Attorney Brent Cole recommended the procedure be added to the Ethics Rules of Procedure. Member Turner recommended a change on page 24 of 42, third paragraph, fourth line, “however corrective action will be strongly recommended **if there may be validity to the allegations.**” Members discussed whether to change “name” of the person providing the information to the “identity” or “contact”. Members agreed to change the “name” of the person to the **“identity”** of the person. Member Turner made a motion to accept the changes as discussed. There were no objections. Motion passes.

- f. Section 17, Complaints - Decisions: Dismissals Not Made Public - Ms. Anderson recommended including all four reasons as noted in AS 24.60.170(c) as reasons for a complaint dismissal that is not made public in the committee’s

Rules of Procedure. Currently only one reason is listed. Ms. Anderson received a request for a document that was not public by statute and found the Rules of Procedure were not consistent with the statute. (See pages 35-36 of 42 in packet.) The committee agreed with the recommended change. Member Turner made a motion to accept the changes as noted. No objections, motion passed.

- g. Section 14, Complaints - Ms. Anderson provided a handout reflecting recommended language for Section 14 which would be consistent with the changes made today in Section 17. Member Turner made a motion to add the recommended language. There were no objections. Motion passes.

3:00 - Rep Gardner arrives and Rep Tuck departs. The meeting resumes.

(GO TO ITEM 10)

9. MARSTON & COLE - FY11 Legal Counsel Contract:

Ms. Anderson explained members were notified in July 2010 of the expired legal contract with Marston & Cole. The FY 11 contract was approved via email and phone in July 2010. However the committee's Rules & Procedures require the contract be approved at a committee meeting with a public vote. Member Turner moved to approve the FY 11 contract for an amount of \$10,000. Ms. Anderson took a roll call vote: YEAS: Skip Cook, Sen Coghill, Toni Mallott, Sen Stevens, Gary Turner, Chair Thomas. Unanimous approval by the committee.

Members returned to Item 8e and the rest of the agenda.

- 10. BUDGET - FY11 & FY12:** Ms. Anderson provided a verbal summary. FY 11 budgeted amount is \$231,800. As of January 5, 2011 expenses incurred totaled \$84,677 with a balance of \$138,530.

Ms. Anderson reported the budget for FY 12 is \$208,200. There were no changes to budgeted items other than a health insurance increase and a 2% COLA increase which was an across the board increase for the entire legislature's budget.

Member Turner motioned that the newly appointed Ethics chairperson, Skip Cook, request a step increase for the Ethics Administrator, and that he join him in speaking to the Finance Co Chairs regarding this request. Member Turner asked Ms. Anderson to update the material regarding this issue from the last budget year with new figures and forward to the committee. Ms. Anderson took a roll call vote: YEAS: Sen Coghill, Toni Mallott, Sen Stevens, Gary Turner, Skip Cook, Chair Thomas. Unanimous approval by the committee.

11. USE OF STATE RESOURCES AND CAMPAIGNING - Informational Only

Chair Thomas stated that the packet before them was indication of the number of times this has been a topic of discussion. It was his understanding that the Legislature was willing to take up this item this year and either decide to leave things the way there are or make any modifications they feel appropriate. Chair Thomas offered to hand the floor over to Sen Coghill. Sen Coghill stated that he did not believe the Legislature would be in total agreement with this issue, and felt it would be an on-going discussion. He stated he had heard some general consensus that it was something that they needed to deal with. He stated he spoke to the House and Senate to find out how this might move forward and was willing to work on it from the Senate side as long there is some understanding that it will come out in a public hearing. The Rules Chairperson is willing to put in a Rules Committee Bill, which would give it some horse power. Sen Coghill stated that he would be working with the Rules Chairperson with the language, and appreciated what the Ethics Committee has put together on the subject. He felt it would be a full blown discussion on it this year as it did not make it very far last year due to the one lightning rod issue regarding the meal issue which became very contentious and brought the bill to a halt. It was his intention to leave out the meal issue this time around.

12. 2011 LEGISLATION UPDATE: Sen Coghill stated he would be willing to work on an ethics bill and draft language based on HB 193 from the last legislative session (which did not pass out of the House). He stated that the “definitions” section in that bill were problematic and he would not include them in a new bill without further work and research. Sen Stevens added that he would like to include the issue of extending the filing deadline for gift of travel disclosures to coincide with the existing 60 day filing deadline currently used by the Legislature when legislators and staff request reimbursement for travel paid for by the legislature. Sen Coghill stated he would be willing to address the consideration of a stipend for public members, but will not likely include it in the first go round. Ms. Anderson reported she had several conversations with Speaker Chenault during the interim on the subject of the use of state funds for a state paid trip and collateral campaign activity while on that trip. Speaker Chenault was in favor of legislation in 2011 to clarify this issue. Ms. Anderson also stated that she had talked to Rep Johnson, Rules Chair, about the issue as well and he was also in favor of legislation to clarify this issue. An historical perspective of legislative travel and collateral campaign activity dating back to 1993 was provided to the committee. The material included suggested wording and various discussions by the Ethics Committee and House and Senate Standing Committees about this subject. Chair Thomas commented that this subject has been an issue and a point of discussion since the establishment of the present Ethics Committee in 1993. Sen Coghill will spearhead the legislation and follow it through the legislature. Ms. Anderson will send Sen Coghill the minutes from all committee meetings in which this subject was discussed. She will keep committee members up to date on what is being proposed.

13. OTHER BUSINESS: None.

14. ADJOURN: Member Turner motioned to adjourn the meeting at 3:20 p.m. No objections.