

Alaska State Legislature

Select Committee on Legislative Ethics

716 W. 4th Ave., Suite 230
Anchorage, AK
(907) 269-0150
FAX: 269-0152

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

MINUTES from February 23, 2012 FULL COMMITTEE MEETING Butrovich Room State Capitol, Juneau

- 1. CALL THE MEETING TO ORDER:** Chair Herman G. Walker, Jr., called the meeting to order at 9:07 a.m. Members present: Senator Gary Stevens, Senator John Coghill, Representative Craig Johnson (alternate), Representative Chris Tuck, Toni Mallott, H. Conner Thomas, Dennis “Skip” Cook, and Gary Turner. Staff present: Joyce Anderson, Administrator. Also present: Dan Wayne, LAA Legal. Absent: Representative Carl Gatto
- 2. APPROVAL OF AGENDA:** Motion made by Member Thomas to approve the agenda as written. No objections. Motion passes.
- 3. APPROVAL OF MINUTES:** Member Cook made a motion to approve minutes of the Full Committee meeting held on September 27, 2011. No objections. Motion passes. Member Turner made a motion to approve minutes of the Full Committee meeting held on October 17, 2011. No objections. Motion passes. Member Turner made a motion to approve minutes of the House Subcommittee meeting held on October 17, 2011. No objections. Motion passes. Member Mallott made a motion to approve minutes of the Senate Subcommittee meeting held on October 17, 2011. No objections. Motion passes.
- 4. PUBLIC COMMENT:** Mr. Bob Roses (former legislator), from Anchorage, testified on Agenda Item 8a. Use of State Resources-Defining Parameters, AO 04-01. He had two points to make. He hoped the committee would take no action on this item. The fact this subject is being reviewed due to redistricting does not hold much water because when this opinion was offered in 2004, it was right after the last redistricting, and if this were a major issue, it would have been addressed then. He noted when he served in the Legislature, it was Rep Coghill, Rep

Gruenberg, and himself that composed a subcommittee of House State Affairs that made wholesale changes to the Ethics Code. They incorporated every ethics bill and every amendment that every senator and representative had and brought them together in one comprehensive omnibus bill. If anything needs to be changed, it should go through the normal legislative process where it can be debated and discussed in committee rather than having the Ethics Committee rule on something that has this much of an impact or magnitude on what goes on.

5. CHAIR/STAFF REPORT:

- a. **Informal Advice Staff Report** - Ms. Anderson stated the October and November Staff Reports had been previously sent to members and the December report was in today's packet. January's report is forthcoming. Ms. Anderson also stated there was a report of log totals sorted by "reason" in the packet for 2011, noting that there were 574 inquiries of a non-routine nature, which required more than a brief response and usually involved written follow up.
- b. **Update-Committee Member Appointment:** Ms. Anderson reported Committee Members Skip Cook and Herman Walker, Jr. were re-appointed to serve on the Ethics Committee by Chief Justice Walter Carpeneti. A confirmation hearing will be held tomorrow, February 24, at 1:00 p.m. in House Judiciary and on Monday, March 5, in Senate Judiciary. Both members will be present for tomorrow's confirmation, and will participate by teleconference on March 5.
- c. **Facebook Access Update:** Ms. Anderson stated the committee has requested permission from Legislative Council to access Facebook. The Ombudsman's Office and Legislative Audit have also requested permission. The request is to be addressed at Legislative Council's next meeting in March. Ms. Anderson explained the reason for requesting permission is not for personal use, but for "oversight". The Ombudsman's Office would also like to use it as a recruiting tool.

Ms. Anderson mentioned that discussion at two of the recent Legislative Council meetings concerning Facebook access for legislators and staff included questions about Facebook's advertisements. Did the fact there were advertisements pose any ethical concerns? Ms. Anderson explained that Facebook has ads for businesses, quitting smoking, games, etc. She suggested the committee might want to address potential concerns regarding Facebook's advertisements. Chair Walker stated until they could flush out what the issue of concern was, he suggested the committee put the issue on hold for now.

Representative Tuck interjected stating his concern with Facebook is how Facebook was being used for hiring practices. Facebook was being used for research in hiring practices. For example, he did not think people

should be hired based on who their friends were, what their political affiliation was, and other private information that may be available on Facebook. He stated there should be tight rules on how Facebook is used for hiring practices. This item was tabled.

- d. **2012 Ethics Training – AS 24.60.150(a)(3) and (4):** Ethics Training was held in Juneau on January 13 with 80 staff attending. Training focused on election issues, campaigning, and redistricting. A make-up training session was held in Juneau on February 17 with 11 staff attending. A teleconferenced training session was held in Anchorage for LJO staff on February 8 where 8 people participated either via teleconference or in-person. As new hires come on board, they will be notified of the required ethics training and complete the training on-line.

Ms. Anderson stated a new training video tape focusing only on campaign-related issues was produced in February which will be available on the Ethics website soon. The training video was produced in-house for no cost, unlike the existing Ethics Training video, which was done outside.

- e. **Campaign Period Oversight Activities:** Ms. Anderson stated the practice of reviewing legislators' campaign websites will be done so again this year. The purpose is to make sure all "contribute" information is removed during session. Letters of intent, affidavit of candidacy and candidate registration forms are also checked to ward off potential complaints. Ms. Anderson pointed out these actions are pro-active instead of reactive and are for the benefit of legislators. Senator Coghill commented he thought the APOC form was more directed this year, therefore, more helpful to him on what should or should not put on the report. Ms. Anderson stated the Ethics office has been working closely with APOC.
- f. **Ethics Disclosures:** Ms. Anderson referred members to the Late Disclosure reports in both packets, noting the "Gift of Travel/Hospitality" disclosures were most frequently late. If SB 89, Sen Coghill's bill passes, the 30 day filing requirement will change to 60 days which will likely result in fewer late disclosures.

Ms. Anderson informed the committee the deadline to file "annual" disclosures was last week and the office was inundated with disclosures. Ms. Anderson stated she strongly encourages online filing over handwritten. She spoke with Tim Powers, our behind the scenes person, (who has been doing a wonderful job for Ethics and thanked him publicly), about a staffer who told her that it was difficult to file Board membership disclosures because she did not have the address of the organization, the dates of her membership terms, and so forth since she was away from her home where the information is stored. Ms. Anderson

stated the Ethics office faxed many previous year disclosures to staff, which is time consuming for the Ethics office. After talking to Mr. Powers, it was determined the previous year disclosure database could be set up to be a searchable database for legislators and staff to pull up and print last year's disclosures containing all the information necessary to file for the current year. It would only be available to those who filed electronically. Ms. Anderson stated the database will also be helpful to see what "Gift of Travel/Hospitality" disclosures were filed.

- g. COGEL Conference Report:** Member Cook briefed the members on his experience in attending the COGEL (Council on Governmental Ethics Laws) conference in December of 2011. He stated that he, Mr. Wayne and several APOC staff attended. It was his first COGEL conference and the sessions were excellent. There was much to be learned and much to be learned from other states. He also stated, overall, Alaska has processes and procedures that handle ethical matters much more expeditiously than a lot of states do. He recommended attending next year's conference to anyone serving on the committee. (Dan Wayne commented on the conference, however, testimony was inaudible.)

h. Publications

- i. Advisory Opinions and Public Decisions – AS 24.60.150(a)(3):** These documents were published and distributed at the beginning of session and read into the House and Senate Legislative Journals. They are also available on the Ethics website.
 - ii. 2012 Standards of Conduct Handbook:** There was no comment.
- i. Annual Benefit and Loan Review – AS 24.60.050(b):** Letters were sent to all of the state departments, as required by statute, requesting notification of any changes to their state benefit and loan programs in relation to the criteria outlined in statute. Each of the 14 departments responded. Changes are outlined on Item 5i. There were no substantive changes that required approval by the committee.
- j. APOC Complaint Decisions 11-18-LOB and 11-16-CD:** Ms. Anderson referred members to the small packet of the two and stated two complaint decisions issued by APOC were of relevance to the committee. The first one references the 2011 Shoot for the Cure charity event. In short, APOC found that Lobbyist Pat Carter violated the lobbying statute by giving a ticket to a legislator for a non-sanctioned event and was fined.

The second complaint decision was heard by APOC yesterday. This complaint is in reference to David Scott, staff to Sen Olson. In short, the complaint states Mr. Scott violated campaign finance laws in that he should have filed a letter of intent prior to announcing his candidacy in October of 2011. APOC will be issuing a decision later today. Ms.

Anderson pointed out to the committee the Legislative Ethics Act requires a legislative employee to resign prior to filing a letter of intent. Chair Walker asked if APOC finds that Mr. Scott was in violation, would he have to resign. Ms. Anderson confirmed that was her understanding.

Representative Tuck asked Ms. Anderson if Mr. Scott had stated that he was just thinking about running, would that have changed APOC's decision making on this? Ms. Anderson stated that although she does not speak on behalf of the commission, based on their discussion yesterday, she would say yes.

Representative Tuck commented on the Ethics office task of Campaign Period Oversight Activities. He stated that yesterday, at the Budget Subcommittee for Administration, Ms. Anderson and APOC were in attendance and Rep Gara asked about getting advice from APOC and then later on, standing by those decisions after the commission met for a final decision. Representative Tuck thanked Ms. Anderson for always giving good advice, especially when they, as campaigners, or legislators, have to have a decision made quickly, and for giving solid advice, before moving forward and going in the wrong direction, and then the committee getting together and addressing those concerns. He believed this was what was being asked of APOC in yesterday's meeting and that they would like APOC to try and follow Ms. Anderson's example.

Ms. Anderson noted she forwarded the appropriate Ethic's statute to APOC after that meeting addressing informal advice as well as a copy of the disclaimer after giving out informal advice and how an advisory opinion can be requested.

6. **BUDGET:** Ms. Anderson referred members to the pink page in their larger packet containing budget figures as of January 9, 2012, and the page in the smaller packet that reflects budget figures updated as of last week. The Ethic's budget of \$238,300 has a 71% balance remaining. Two new office printers were purchased for a cost of approximately \$2,000. The old printers were no longer supported by LAA. The cost of a new copier with PDF and fax capabilities is being researched. LAA will no longer be supporting the current copier. Eliminating the existing fax machine will also free up much needed space in the Ethics office. The intent is to purchase a new copier prior to end of FY 12. No comments from committee members.

10:00 AM MEMBERS TOOK A BREAK TO ATTEND SENATOR LISA MURKOWSKI'S SPEECH

11:20 AM MEMBERS RECONVENED

7. **ADVISORY OPINION 11-04** requested by Ethics Committee - Define and interpret participation in a sanctioned charity event, AS 24.60.080(a)(2)(B).

Chair Walker asked Mr. Wayne, LAA Legal, to provide an overview. Mr. Wayne referred members to the bottom of page 2, the last sentence and stated the reference to “donor” should be changed to “recipient”. He stated the conclusion of the opinion, on page 7, best sums up the opinion. He made a distinction between someone saying to a legislator, *“Here’s a contribution, Senator. I know you’ve been helping to raise funds for the American Cancer Society. Can you pass this on for me?”* Versus, *“Here’s a ticket to the American Cancer Society charity event. It cost me \$150, it’s a fundraiser and you can attend with this ticket and there will be a lot of fun things to do there.”* The American Cancer Society might consider the donation to be a generous contribution, but under the Legislative Ethics Act, it is not considered a contribution but rather a ticket from which the recipient is getting a benefit.

In determining the value of a gift, specifically a ticket, under AS 24.60.080, Mr. Wayne stated the value of a gift is determined by its “fair market value” which is different than the way it is determined by the Executive Branch. (See memos by Judy Bockmon, State Ethics Attorney, in packet.) “Fair market value” is not defined in the Act. On page 6 of the advisory opinion “fair market value” is interpreted to mean the price a willing buyer would pay to a willing seller for an item for sale on the open market, in an arm’s length transaction, taking into consideration all users for which it is suited. This analysis is based on a fairly common definition of fair market value.

The answer to the third question is summarized on the bottom of page 7 - “Does the charity event with a short presentation, perhaps forty-five minutes or an hour, on an educational issue qualify the event as obtaining information on a matter of legislative concern?” AS 24.60.080(c)(4). Mr. Wayne stated the opinion was drafted on this subject narrowly. He stated he didn’t have the facts in mind presented today about the Kenai River Classic when he drafted the opinion. (Note: Testimony given by Mr. Ricky Gease, Kenai River Sportfishing Association, earlier in the meeting.) Mr. Wayne stated the language addresses an exception for travel and hospitality that’s “primarily for the purpose of obtaining information on matters of legislative concern”. He referred members to the top of page 8, where he states, “...unless the educational presentation is the primary purpose of the charity event or comprises the bulk of the legislator or legislative employee’s participation in the event.” This language was an attempt to create objective criteria, where you could say, *“This is how much time was spent”*. Mr. Wayne explained the Act is written to evaluate or measure factors objectively. For instance, a gift from a lobbyist has the appearance of influencing a legislator’s opinion since a lobbyist’s main objective is to obtain the best result for their employer. A section of the Act grants very narrow exceptions to this rule. It does not distinguish whether or not the gift from the lobbyist is intended to sway your opinion or not. The Executive Branch Ethics Act has a different approach in that the determining factor for a gift, for example, is whether or not a gift is likely to influence the person who receiving it.

The objective criteria in the opinion are stated as follows, the “bulk of the legislator or legislative employee’s participation in the event” is related to an educational component. In other words, is the majority of the participation associated with the educational component or close enough related to it that participation is related to “obtaining matters of legislative concern” or was the event attended just for the food. Mr. Wayne pointed out the exception in AS 24.60.080(c)(4) does not apply to gifts from lobbyists. The Act divides non-lobbyists into one group and lobbyists in another.

Mr. Wayne referred members to the footnote where he listed five things you should know before accepting a gift or a ticket of admission to participate in a charity event. These items were not meant as definitive rules but as general guidelines. The list was in the October 2011 ethics newsletter, THE ADVISOR.

Chair Walker introduced testimony from the floor. Mr. Ricky Gease, executive director for the Kenai River Sportfishing Association, stated they put on the Kenai River Classic Events. He introduced Mr. Reuben Hanke, vice chair of KRSA’s board of directors. Mr. Gease indicated he had read AO 11-04 and would like to talk about the context of what education means in terms of a legislative purpose and how it may apply to a lot of different events in Alaska. He mentioned the Safari Club International, who puts on multi-day events. They, too, were intending to be here but their fundraiser was this weekend; therefore, Mr. Eddie Grasser could not be here to comment. Mr. Gease explained the KRC event is a 3-day event with education imbedded in all components of the event. The concept they wanted to stress was that education takes place not only in a presentation style setting, such as this meeting, where someone is talking and giving a presentation, but also in one-on-one conversations with participants and organizers during an event. For KRC, education takes place on a boat with fishing guides who have attended the Kenai River Guide Academy and are well versed on many topics. Mr. Hanke is a certified guide on the Kenai River. Every minute you are on the boat, questions arise, and conversations take place on what’s happening and why it is happening. KRC also gives presentations during lunches and dinners about people in the community who have volunteered their services to the community. They have recognition ceremonies that occur during an event. Mr. Gease explained when people attend one of the KRC events, they encourage legislators to stay with local community members, if they do not have a place to stay. Staying overnight in someone’s home in Kenai gives legislators some insight into the community and a chance to learn of the concerns of the community.

Mr. Gease stated they also hold a time-specified educational presentation during the KRC that lasts about an hour and half usually held on the second day. The director of Sportfish and the director of Parks usually talk about legislative issues and present concerns. There are also funding issues the Legislature has on an on-going basis as well as new regulations and rules that have come into place. Guides have about 56 regulations they work with under State Parks. There are

also public access issues regarding the Kenai River, just to name a few. He stated legislators who attend charity events take with them different components; for example, someone next to you at an event may have a different issue at hand than the issue you have, resulting in a conversation on both issues. Mr. Gease recommended, as this committee attempts to make an objective list of standards, that they do not put themselves in too tight of a box. He reiterated education is broader based. He stated one of the strengths of the state of Alaska is that we do have legislators who travel around the state gathering information for legislative purposes. He felt this was why the Legislature is so effective. There are many charities trying to raise money, but the key to raising money is there is a reason for raising money, and it's not just a presentation. You can fall asleep attending an hour presentation. Hands on learning built into the event can be just as meaningful and purposeful. If you're out on the river, for example, catching a fish, feeling the rod and a fish on the other end of it and experiencing the ah-ha moment, you get it. Mr. Gease asked the members to consider this type of hands-on experience as an educational and legislative purpose during their deliberations.

Member Thomas thanked Mr. Gease and Mr. Hanke for their input and asked if the educational component has remained the same since 2007 - the Kenai watershed and how legislation may or may not affect it. It sounded to him like they have expanded it to include sports fishing and guide regulations, etc. Mr. Gease stated their mission is the same which is to ensure the sustainability of the Kenai as one of the world's great sport fishing rivers. In terms of a natural resource dividend, three million pounds of fish come out of the Kenai River and into the freezers of Alaskans, which is one of the largest natural resource uses in Alaska by citizens of the state. There's a billion dollars of property value along the Kenai River. Due to the fact that the river is generating a lot of value, it takes a lot of money. He stated they have spent over a million dollars a year from the Fish & Game budget to have sonar monitor the king salmon returns. That's what the legislature is doing for them-- appropriating funds, looking at regulations and issues. By holding KRC events, it brings legislators and other business people and the community together, talking amongst each other about those issues. He explained the education component is not confined to a one hour presentation. It is the whole event, itself.

Member Thomas asked what was the subject matter of the "formal" presentation at the KRC. Mr. Gease stated topics vary from year to year. This year, the issue will be on public access. Eagle Rock, which was on private property for a number of years, is now being funded to be a state park. Another issue was fish carcass management. There are approximately thirty thousand households accessing the river and the City of Kenai is trying to manage this activity. Generally, topics are on habitat access, angler access, habitat conservation and long term sustainability. Ten million dollars has been put into restoration projects to prevent damage from the throngs of people using the river. Unless you experience being on the river firsthand, you might not fully understand the importance of supporting the sustainability. If a legislator is looking at an item in

a budget for a million dollars for a cost share program and looking at constricting budgets, it might be an easy one to cross off. However, cutting the funding might not ensure the sustainability of the river for the long term, and the river has an economic impact of hundreds of millions of dollars to the state's economy.

Member Turner asked Mr. Gease to touch on the impact of the commercial value. Mr. Gease responded there are important issues concerning commercial fishing in Cook Inlet. Typically, the value is from fifty to hundred million dollars. There are two industries important to our economy. Fisheries branding programs are discussed at the KRC events. This year oyster sellers are coming in from Kodiak. Usually a wide range of people come in and speak on different ideas and topics.

Representative Johnson stated that as a member of the committee and having attended the Kenai River Classic, he declared a conflict of interest. He viewed the KRC as "the event is the education". As he listened to testimony, he listed a page and a half of items he learned outside of the official meeting. For example, he learned about width escapement, bank erosion, the horse power rule and when it was changed and the effect it had with smaller boats (bigger boats with smaller engines did more erosion than the bigger engines); the guide school; bait versus no bait, allocations-who gets what fish; set netting at the mouth of the river; economic value of the sport; local guides versus non-local guides; etc. Representative Johnson stated he stayed with a family in the community and learned more at this family's home and from the guides about their uses of the river than at the one hour meeting. He stated when Mr. Gease says, "the event is the education", for him, the event starts on the drive from his house in Anchorage to the river until the trip he makes back home.

Chair Walker asked Rep Johnson how he viewed the difference between the KRC experience and the Shoot for the Cure event experience. Rep Johnson responded that basically there was an educational component to the Shoot for the Cure that focused on a specific illness. Participants learned about the illness as part of the skeet shoot. If the skeet shoot was a fund-raiser for shooting sports, where everything you did from loading your gun to ear protection and eye protection, all the way through, he felt the skeet shoot would be on par with the KRC. The Shoot for the Cure was a fundraiser where you were able to enjoy some type of fun recreation.

Representative Tuck stated he participated in the Kenai River Classic and although he was on a different boat than Rep Johnson, he received the same education. He stated he learned a lot from participating in his first Kenai River Classic Event. He felt the educational component of the second one he attended was somewhat diminished than his first year.

Mr. Gease pointed out the Safari Club International does a similar event to the Kenai River Sportfishing Association. Their focus is on outdoor recreation, hunting and shooting skills and they embed these skills in the presentations.

Member Thomas motioned to adopt Mr. Wayne's Advisory Opinion 11-04. Senator Coghill objected for further discussion.

Member Thomas suggested removing the language in the opinion that described the length of an educational presentation based on testimony today by Mr. Gease. He felt compelled to stick with the other language on the "primary purpose". He suggested striking the words in the conclusion on page 7, item 3, and beginning with, "...an hour or less in length..." through "...unless the educational presentation is the primary purpose..." Member Turner asked Member Thomas if he wanted to keep the word "presentation" and commented that he did not want to put a description of an education event in a box as Mr. Gease suggested. He recommended replacing the word "presentation". Several members joined in suggesting that they replace the word, "presentation" with the word, "component". Senator Coghill stated that "component" may still be confining and suggested the words, "a charity event that is educational in nature".

Mr. Wayne suggested crossing off, "educational presentation" and after the word, "includes", add "education". It would read,

When a legislator or legislative employee attends [an] "a" charity event that includes "education", [an educational presentation an hour or less in length hospitality or travel provided to the legislator or legislative employee to facilitate] their attendance and participation in the charity event is [not] covered by the exception for obtaining information on a matter of legislative concern under AS 24.60.080(c)(4) [unless] "if" [the educational presentation] "education" is the primary purpose of the charity event or comprises the bulk of the legislator or legislative employee's participation in the event.

Representative Johnson stated the primary objective of any fundraiser is to raise money. The primary function is not education, it's a byproduct of the Kenai River Classic raising the money to help with education about the river. Mr. Wayne stated that issue is addressed as follows, "is the primary purpose of the charity event or comprises the bulk of the legislator or legislative employee's participation in the event". Education is measured in two ways.

Representative Johnson asked if "bulk" had the same meaning as "time". If bulk is time, and you go to a two hour seminar, and do something else for three hours, then the bulk of time spent is not the education, although the education may be the main purpose. Representative Johnson suggested removing "primary purpose" and say, "is a purpose" of the charity event." Mr. Wayne replied the statute uses the words, "travel and hospitality primarily for the purpose of obtaining information..." Member Cook suggested changing "or" to "and" where it says, "is the primary purpose of the charity event [or] "and" comprises the bulk..." Mr. Wayne replied the change would lose the alternatives as mentioned by Rep Johnson. Member Turner liked Rep Johnson's suggestion. He suggested

removing the latter part of the sentence, “or comprises the bulk of the legislator or legislative employee’s participation”, and only stating, “is the primary purpose of the charity event”.

Member Mallott asked if “educational purpose” included money given in education fees. Mr. Wayne answered “no” and further stated the reason was the exception addresses the legislator or legislative staff receiving something for the purpose of obtaining information; adding that it is pretty narrow. The opinion calls it education, but obtaining information would be another way to go.

Member Cook commented the statute uses the word “primarily” in AS 24.60.080(c)(4). It focuses on primarily why the legislator is going there, not what the event is. In other words, if a legislator were going to a two-day event, but there was an educational component only on day one, and went only on the first day with the intent to obtain the educational information and not attend the other activities of the event, this scenario would qualify. To follow the statute, the opinion should have language about why the legislator is going primarily, not what the primary purpose of the event is. Mr. Wayne responded it could be interpreted that way, and it wouldn’t be unreasonable; but you would be getting away from the objective analysis and getting into what is in the person’s mind. This type of analogy was stated in one of APOC’s decisions, a common sense approach. APOC said more likely than not s/he was attending “because of” and then listed a reason. He indicated he tried to steer away from a common sense approach. The committee could rewrite the sentence to express the same idea but he wanted the committee to understand what the concern was. Representative Johnson explained he didn’t want to use the terms “bulk” or “majority”. Majority is 50 plus one and has a definition. Bulk also has a specific definition; it refers to time. He said in previous committee discussions we wanted to avoid using time as a measurement. Mr. Wayne suggested saying, “the primary purpose of the legislator or legislative employee’s participation in the event”.

“When a legislator or legislative employee attends [an] “a” charity event that includes “education”, [an educational presentation an hour or less in length hospitality or travel provided to the legislator or legislative employee to facilitate] their attendance and participation in the charity event is [not] covered by the exception for obtaining information on a matter of legislative concern under AS 24.60.080(c)(4) [unless] “if” [the educational presentation] “education” is the primary purpose of the charity event or [comprises the bulk of] **the primary purpose** of the legislator or legislative employee’s participation in the event.

Mr. Wayne noted it would be difficult to measure the legislator’s purpose. How do you tell after the fact, or before the fact, when a legislator calls and asks for advice on attending a charity event if that is their purpose. Perhaps the opinion cannot be made any more “objective”.

Ms. Anderson presented wording that she and Member Cook came up with in addressing Rep Johnson's concern about including "the" before "primary purpose", and asked if "primarily the purpose" would work. Ms. Anderson referred Mr. Wayne to the top of page 8, beginning with, if [the educational presentation] education is [the] **primarily** [primary] the purpose of the charity event." Ms. Anderson stated that "primarily" is from the statute. Mr. Wayne responded that it would be easier to mold it to facts of a specific case if it were worded "primarily the purpose" or "a primary purpose". You would be broadening it a little bit, if that is what the committee wanted to do.

"When a legislator or legislative employee attends a charity event that includes education, their attendance and participation in the charity event is covered by the exception for obtaining information on a matter of legislative concern under AS 24.60.080(c)(4) if education is primarily the purpose of the charity event or primarily the purpose of the legislator or legislative employee's participation in the event."

Member Thomas moved to amend his motion to adopt the language as stated by Mr. Wayne. Representative Johnson commented how important the actual language in an opinion is in relation to what they do on a daily basis. He presented the scenario what if there's a member sitting in front of you and he says the charity event has not been approved or it does not qualify and he says his purpose was to be educated and that is why he went. However, after he got there, he discovered he didn't learn anything; it was not educational or not as advertised. He posed the question, "What's the committee going to do?" and "How do you define purpose? It's almost like motive. Legislators try very hard not to affix motive. We take people's word as it's pure and not motivated by something other than that. A legislator can attend anything s/he wants to and say that his/her purpose was to learn something but it didn't work out that way or it's the committee's opinion that it didn't and I learned something, so prove I didn't and prove my purpose was disingenuous. That's a pretty difficult standard for this committee. He has trouble putting himself in that position or putting another legislator in that position or a member of staff or anyone else.

Chair Walker commented Rep Johnson has a good point and "education" is difficult to define. Member Thomas commented the committee was tied to the word "education" because that is what's used in statute. His best guess would be if the issue comes up, the first part of the opinion is going to be the most important; specifically, what the event was offering. If it was advertised as offering an educational component or had an educational purpose, it's likely a person would say that they attended for that purpose. The legality being this language follows the statute. Senator Coghill agreed the question is very real, but what this opinion does is provide the committee with a directive and prompts those covered by the Act to ask questions. The question boils down to, "How do you justify the charity event that is primarily educational or a charity event with an educational component that may not be unethical?" The opinion will at least provide some direction if someone does appear before the committee.

Representative Johnson felt it was important to make known on the record the committee grappled with this issue and sometimes the decisions are arbitrary.

Member Cook referred members to page 7, second paragraph, third line, where the sentence says, "...employee accepts part of the ticket as a gift." What is the reason for inserting "part of"? Mr. Wayne responded the language was in reference to multi-part tickets; for example, one ticket provides admission for five people. Member Cook restated that he viewed it as five people each receiving a ticket, not \$1500 for 1 ticket. He found it confusing to state they are accepting "part of a ticket". Representative Tuck added with a table ticket, sometimes you can get 10 people at a table, sometimes 5 people at a table. You may buy a table and only have 4 or 5 people show up. The ticket would then be divided up by the number of people at the table or by the number of people that show up.

Members agreed to return to this issue later. Representatives Tuck and Johnson and Member Turner recused themselves from the vote due to the appearance of impropriety. A roll call vote was taken: YEAS: Senator Stevens, Senator Coghill, Members Cook, Mallott, Thomas, and Chair Walker. NAYS: None. Motion passes.

Members returned to Member Cook's concern brought up before the vote; however Member Cook stated that after reading the entire paragraph he was satisfied with it as is.

Member Cook requested clarification on the exception found on page 8, sentence beginning with "Furthermore, the travel and hospitality exception under (statute) applies only to the prohibition on gifts from non-lobbyists under (statute), not the prohibition on gifts from lobbyists and their family members..." Member Cook stated it was his understanding a lobbyist still could not give tickets to the KRC, but a non-lobbyist could. Mr. Wayne responded by explaining it was helpful to remember that AS 24.60.080 does not prevent a lobbyist from giving a gift but that it prevents a legislator or legislative staff from receiving or accepting certain gifts from lobbyists. Member Cook restated his understanding that a legislator could not accept a ticket to the KRC from a lobbyist but could accept it from a non-lobbyist. Mr. Wayne answered "yes" because they are not included in exceptions. Member Cook wanted everyone to have this same understanding.

Ms. Anderson pointed out there was a typo in the footnote on the bottom of page 3, stating, "Also, in the context of", the next word, "the" needs to be deleted. Member Turner pointed out the minutes from the June 11, 2007 committee meeting state Mr. Hanke, a guide, was a registered lobbyist for KRSA. Mr. Hanke is a KRSA board member and registered as a representational lobbyist and receives only reimbursement for his food, lodging and travel expenses and therefore is not a "registered" lobbyist. The Ethics office will make the correction.

Senator Coghill appreciated the footnote on page 8 pointing out the five things you should know before accepting a gift of a ticket to participate in a charity event. He wanted to add charity events are sanctioned on a regular basis and the first question a legislator or legislative staff should ask before accepting a ticket is whether or not the charity event is a sanctioned event.

Chair Walker asked for a motion to approve AO 11-05 as amended. Member Cooked motioned to approve. Representative Tuck requested verification this advisory opinion wasn't specific only for the KRC and asked if he needed to recuse himself from the vote. Chair Walker responded, "No."

Mr. Wayne commented if this advisory opinion resolves questions relating to the KRC it might be helpful to have a footnote saying something to that affect. However, if the committee views the opinion as a step along the way in offering guidance, and is not making any final decisions about the KRC, then he would suggest no footnote. Chair Walker viewed the opinion as a step along the way. He asked for comments. Senator Coghill agreed with Chair Walker's statement and added it was a directive not only for legislators but for the Legislative Council when they consider sanctioning a charity event. The opinion is general guidance for all charity events because every charity event is different.

A roll call vote was taken: YEAS: Senator Stevens, Senator Coghill, Representative Johnson, Representative Tuck, Members Cook, Mallott, Thomas, Turner, and Chair Walker. NAYS: None. Motion passes.

8. USE OF STATE RESOURCES – Define parameters

- a. ADVISORY OPINION 04-01:** Use of Constituent Information Gathered by a legislator. AO 04-01 was added to the agenda to determine applicability to a year in which Redistricting occurs. Ms. Anderson summarized the issue at hand stating legislators have asked if they can combine their campaign database, which most likely contains names of individuals who are in their new district, with their constituent database. AO 04-01 allows the combining of these lists.

Chair Walker reminded members of Mr. Roses' testimony earlier in that he recommended the committee leave the advisory opinion as is and not revisit it. Member Thomas agreed with Mr. Roses. He did not see any reason to readdress it. Other statutes cover the issue raised. Ms. Anderson pointed out she learned a campaign list can be divided into those residing in the current district and those who are not. Comments from members were heard. Senator Stevens recommended leaving the advisory opinion as it. Chair Walker asked if members were in consensus of leaving the advisory opinion stand as is and all agreed.

b. ELECTRONIC FILING OF CAMPAIGN REPORTS:

- i.** May public computers, a state resource, at APOC offices be used to complete mandatory electronic filing of candidate reports?
- ii.** May the Capitol Wi-Fi, provided by the Legislature, be used to complete mandatory electronic filing of candidate reports?

Ms. Anderson stated questions have been asked whether or not legislators may use APOC computers to file online campaign reports since they are a “state resource” and whether the Capitol Wi-Fi, also a “state resource,” could be used for campaign related activities.

Mr. Wayne stated the use of APOC computers is at the request and convenience of APOC. Member Cook felt if the legislature requires a candidate to file campaign disclosures, it has a legislative purpose; therefore, a legislator should be able to use APOC computers. Member Turner agreed and added this use is a narrow exception to the prohibition. Legislators should be able to use computers if there’s a legislative purpose. (THE REST OF HIS TESTIMONY IS INAUDIBLE) Representative Johnson asked where do you draw the line? Is it at APOC or can you use the administrative computer on third floor (Governor’s offices)? Representative Tuck stated a nonlegislative candidate cannot use a legislative computer, whereas at APOC, they can. Mr. Wayne pointed out Legislative Council adopted a policy (Appendix E of the legislative staff employee handbook, page 3) stating, “No persons shall use legislative computers and computer systems to promote any commercial venture or political campaign.” He wasn’t sure if filing APOC paperwork was necessarily “promoting” a campaign and suggested this analogy might be another way to distinguish between a computer provided by APOC for everyone’s use and a computer provided to a legislator for a legislator’s use.

Chair Walker suggested the Committee send a letter to APOC stating legislators were allowed to use APOC-provided computers to file APOC-required reports. All members agreed.

Member Turner offered an example stating he thought it was ridiculous that Sen Coghill, for instance, could not use his office computer to file an APOC-required form, but could use an APOC-provided computer. Joan Mize, Juneau APOC Administrator, commented it was her understanding legislators are allowed to use their office computers to file their legislative financial disclosure forms because the disclosure is related to their position as a legislator. Campaign disclosure forms, however, are not related to

their jobs as legislators. Ms. Anderson stated the comment made by Ms. Mize has been the advice provided to legislators.

Member Cook commented legislators should not have an advantage over a nonlegislative candidate. However, what we are suggesting is to allow all candidates (sitting legislator or not) authorization to use state owned computers at APOC to file required reports. There is a purpose for either to file because it is mandated by statute. He stated he did not oppose a legislator using his computer in his office like a non-candidate can use his own personal computer or go to the state and find one.

Representative Tuck commented the key word is “campaign related”. For example, what if his opponent was a “state employee” and he (the legislator) was authorized to use his office computer (a state resource), would the employee then be allowed to use his/her state owned office computer as well? Campaign-related forms cannot be filed using state resources except APOC provided computers. This ruling would be fair because neither the sitting legislator nor other candidates could use state owned computers except for APOC-provided computers. Neither has an advantage over the other.

Senator Coghill had two issues to comment on. First, campaign disclosures are required for transparency. He believes the public portal, whatever it may be, should be allowed to be used since it is not about his campaigning, it is about disclosing. He did not know if either had an advantage if anyone can go to a public portal and report the activity for accountability. Senator Coghill stated his second point was the distinct disadvantage to legislators at the time the disclosures are due because they are in Juneau and not in their home district. The issue at hand is really about the portal of reporting. He didn't see why the public Wi-Fi or any public computer for reporting purposes would not be allowed. He viewed the issue as being a portal mechanism for accountability.

Mr. Wayne referred to members to AS 24.60.030(a)(2)(D):
a legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a non-legislative purpose....does not prohibit a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for non-legislative purposes if the use does not interfere with the performance of public duties and if there is no cost to

the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others;

Mr. Wayne noted the statute does not say, "even if it is for a campaign purpose.

Representative Tuck agreed with Sen Coghill's comment about being at a disadvantage during a legislative session and he was in favor of legislators using state computers in their offices as a portal during session. However, outside of session, this use could be an advantage since some people do not have Broadband service or may have limited computer access or no access to a computer. Senator Coghill asked if a candidate walked into a state office, such as the LIO, and wanted to file a report because his/her home power went out, would the person be refused access to the computer by the LIO? Various members answered yes.

Chair Walker asked if the committee was in favor writing a letter to legislators stating they are authorized to use the Capitol's Wi-Fi for disclosure purposes and add the Wi-Fi usage to the letter going to APOC. Member Cook suggested a sentence be added indicating the Committee has determined the filing of financial disclosures by candidates for office has a legislative purpose; therefore state resources can be used to accomplish it. Sitting legislators or not—Wi-Fi at the Capitol and/or at the LIOs. Member Turner withdrew his motion. Member Cook motioned the Committee state the filing of financial disclosures by candidates for office has a legislative purpose and state resources can be used.

Representative Johnson did not agree there was a legislative purpose for filing campaign disclosures. There are many requirements legislators are required to meet and not all of them (such as candidate activities for instance) have a legislative purpose—even if they are mandated by the Legislature or by statute. Member Turner asked if this usage fell under di minimus use. Mr. Wayne referenced AS 24.60.030(a)(2)(H): reasonable use of the Internet by a legislator or a legislative employee except if the use is for election campaign purposes. Member Turner supports Sen Coghill's comment that filing a required report is not supporting a campaign. MEMBER THOMAS' TESTIMONY WAS INAUDIBLE.

Representative Johnson recommended more research on this subject. He suggested the item be tabled. Member Cook clarified the motion was only in regard to the form required to file for someone intending to run for office.

Ms. Anderson took a roll call vote. YEAS: Members Cook and Turner; NAYS: Senator Coghill, Representative Johnson, Representative Tuck, Members Mallott, Thomas, and Chair Walker. Motion fails. Members voiced concerns this issue would surface again. Ms. Anderson suggested putting it on the next agenda and discussing concerns with Mr. Wayne and APOC.

Representative Tuck made a motion to write a letter to inform legislators and staff the use of the Capitol's Wi-Fi is a public service that can be used by anyone, including legislators and staff, for non-legislative purposes including completing campaign electronic reports. Members discussed the motion and decided to add to the last sentence, "within the policy set forth by the Legislature". Representative Tuck clarified a state laptop was still prohibited but a personal computer was allowed. Ms. Anderson stated she would add a footnote. Roll call vote: YEAS: Senator Coghill, Representative Johnson, Representative Tuck, Members Cook, Mallott, Thomas, Turner, and Chair Walker. Vote unanimous. Motion passes.

9. **2012 LEGISLATION UPDATE:** Senator Coghill reported SB 89 was cleansed of the controversial items and is in good shape. However, the hearing in House State Affairs brought up the subject of volunteers and what constitutes a volunteer and whether or not a spouse can be a volunteer. The subject of volunteers will be addressed prior to the bill being heard in House Judiciary. Ms. Anderson voiced concern that if changes were made to the volunteer section, she would need some guidance in order to provide the appropriate advice. Representative Johnson commented he had concerns with volunteers in legislative offices. In the past, there had been a volunteer who was on payroll of an organization whose sole purpose was to promote certain legislation. He also observed a volunteer whose sole purpose was to gather information on candidates and was also employed by an outside organization. He is not in favor of volunteers working in the Capitol unless recognized as an intern. Chair Walker asked if interns were required to attend Ethics Training. Ms. Anderson responded to Rep Johnson's comment that interns were not an issue because the program is approved by the Ethics Committee. Currently, both interns and volunteers are not required by statute to take Ethics Training. Chair Walker stated Ethics Training should not be difficult to implement. Ms. Anderson stated some legislators have their wives volunteer and some have high school students in the summer for a week or two.

Chair Walker asked what language in SB 89 relates to implementing ethics training for volunteers. Senator Coghill indicated bill language would require volunteers who work for a legislator for over 30 days (within a two year legislative session) to attend Ethics Training. In response to Rep Johnson's concern, volunteers would be at the legislator's discretion. Representative Johnson suggested requiring volunteers to fill out a form asking if they have a conflict of interest or are employed by Green Peace or an oil company. The form would include a statement about a penalty for failure to disclose the information, similar to the penalty for a legislator who does not disclose a conflict. Another idea would be to require a financial disclosure before they can volunteer. These checks and balances would deter volunteers with ulterior motives. Senator Coghill offered to take out the section on volunteers until specific language could be formulated that all agree upon before it goes to House State Affairs or House Judiciary. There was concern by members there was no penalty for failure to disclose a conflict. Chair Walker asked if this situation required a legislative fix or was it something that could be fixed as policy. Representative Johnson indicated as House Rules Chair, he already had a policy, but the next Rules Chair may not. Ms. Anderson stated the last time she tried to implement a form for employees to sign she was told by Pam Varni, LAA Executive Director, to go through Legislative Council for approval. She felt a statutory change was in order to make this a permanent requirement. Rep Johnson believed the reason a change had to go through Legislative Council was because the subject matter dealt with employees. He did not think volunteers would need to go through Legislative Council, although he would like it changed in statute to allow permanency.

1:45 p.m. Members took a minute break.

2:05 p.m. A motion was made by Member Turner to go into executive session.

10. ADVISORY OPINION 11-05:

- a. Motion to go into EXECUTIVE SESSION** to discuss an advisory opinion request which is confidential, pursuant to AS 24.60.160(b)

11. PUBLIC SESSION: Motion made by Member Turner to approve Advisory Opinion 11-05 relating to potential conflicts of interest and employment in the private sector. Roll call vote: YEAS; Sen Coghill, Rep Johnson, Rep Tuck, Members Mallott, Thomas, Turner and Chair Walker. Absent for the vote: Sen Stevens and Member Cook. Motion passed unanimously. AO 11-05 approved.

12. OTHER BUSINESS: None.

13. ADJOURN: Member Turner made a motion to adjourn the meeting at 2:38 p.m.