

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from February 28, 2011 FULL COMMITTEE MEETING State Capitol, Fahrenkamp Room, 3:00 p.m. (Meeting was teleconferenced)

1. **CALL THE MEETING TO ORDER:** Chair Cook called the meeting to order at 3:06 p.m. Members present: Senator Stevens, Senator Olson (arrived at 3:07), Representative Gatto, Representative Tuck, Toni Mallott, H. Conner Thomas, Gary Turner, Herman Walker, Jr. Staff present: Administrator, Joyce Anderson. Also present: Dan Wayne, LAA Legal Counsel.
2. **APPROVAL OF AGENDA:** Chair Cook announced he wanted Item 8 moved up and heard before the Advisory Opinions, which will be heard in Executive Session. Member Turner motioned to approve. There were no objections and agenda was approved.
3. **APPROVAL OF MINUTES:** Member Thomas motioned to approve the January 19, 2011 Full Committee Meeting. There were no objects and minutes were approved.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
  - a. **Ethics Training:** Ms. Anderson stated that 483 employees received training as of this year as well as 60 legislators. There were 12 employees who have yet to complete mandatory ethics training. The 12 remaining employees and their supervisors have been notified that they have 2 weeks to complete training. Since notification, 3 of the 12 have completed training online. Ms. Anderson stated that she conducted 11 training sessions this year; 2 classes for legislators and 9 classes for staff. Member Walker asked what the consequences were, if any, for not completing training within the timeframe given. Ms. Anderson stated that the Rules of Procedures require that the committee notify leadership, Senate President or House Chair. Rep Gatto asked if

there were a legal issue if an employee does not follow through with training. Ms. Anderson explained that there were no penalties for not completing training in statute.

b. Budget Update: Ms. Anderson handed out a memorandum from Brent Cole, outside legal counsel, addressed to H. Conner Thomas, who was Chair at the time the memo was written. Chair Cook and Member Turner asked Ms. Anderson to explain how the memo came about. Ms. Anderson stated that at the last budget process, the House side of the budget process put in a request to review her position. The committee reviewed the statute to determine who had authority to review the qualifications of the administrator. Member Thomas requested a legal opinion stating who had authority to determine the duties and responsibilities of the administrator's position. Chair Cook stated that it is the committee's responsibility not only to set the terms of employment but to set the salary subject to the budget processes of the Legislature. It is the committee's recommendation that the administrator's position be upgraded from Range 22 to Range 24. Justification has been provided to the Legislature, and it is now up to budget committees of the Legislature to implement it. If there are any questions, Mr. Cole will be present later on in this meeting to answer them.

6. **ADVISORY OPINION 11-02** requested by Rep Gara – Is it permitted under the Legislative Ethics Act to recognize and thank for-profit businesses in a legislative communication for providing a community service? Chair Cook introduced Rep Gara to the floor. Rep Gara thanked the committee for addressing his question. Rep Gara stated that he read the Advisory Opinion drafted up and had one suggested change. Rep Gara first explained that his question was prompted after the committee's decision that it is inappropriate for one legislator mention a whole list of businesses, about a month ago. This prompted him to ask what happens when you want to mention a business that has done good community work or you want to mention a business that has done good volunteer work in a community. The Legislature relies on working with businesses to get them to do things that maybe the government cannot do. One example his office does is get businesses and people to get computers to children of OCS (Office of Children Services). OCS does not have the money to get computers for these kids who need them for school work. It helps our efforts if we can thank somebody. If you can thank somebody, it helps your efforts to get the next person to think, if we do it, maybe we'll get some recognition. Most people who donate the computers are altruistic, but if a business makes the donation of 20 computers because they know they'll get a thank you for it, Rep Gara felt "we" need to do that, as a state. Another example is the clothing program his office is involved in. Several stores have offered a discount to foster youth, as the state does not have a clothing allowance for foster youth. Rep Gara stated that we have to mention the store names because no one will know who they are. By mentioning the store names, you might also get stores to join the effort. These two examples are reasons to be able to mention a name of a business, and why he believes there shouldn't be a flat rule that you, as a legislator, cannot ever mention a name of a business. Ms. Anderson's drafted opinion properly addresses those issues, however, he recommends adding that the things stated in this opinion are not a violation for the reasons that are stated in the drafted opinion. Also, add that it is also not a violation unless the statement was primarily motivated to confer an economic benefit by advertising the party's goods or services.

Chair Cook stated that this advisory opinion did not include for profit business, and there would have to be a separate opinion addressed for profit business. Rep Gara corrected the Chair stating that this opinion addresses for profit businesses that do social good, but agreed that it would be addressing a separate subject.

Mr. Wayne, who drafted the advisory opinion, was introduced to the floor. Mr. Wayne provided a brief explanation of the opinion referring all to page 2 where the committee takes up the complaint, about a legislator listing local businesses in a newsletter and tries to draw a distinction between comments like those, and comments like the ones the requester of the opinion was asking about, and the distinction is drawn most clearly on page 3, at the top, where it states, **“however we distinguish between a communication that’s identifiable on its face as nothing more than an acknowledgment and thanks, and one that is not. One that is not can too easily be perceived by the public as an endorsement of the business or its commercial services or products regardless of the intentions of the legislator or legislative employee who publishes it.”** It goes on to say whether general praise of a for profit business is an implied endorsement and then it says an endorsement of a for profit business or its commercial products or services in a legislative newsletter whether explicit or implied is prohibited by 24.60.030(a)(2).

Chair Cook stated that the committee’s difficulty is a listing of just some businesses and not all--that didn’t seem to imply or endorse of those that were listed because there had been a selection process. Mr. Wayne replied that the Subcommittee grappled with in the House Subcommittee complaint decision was what kind of weight to give subjected intentions of the person making the statement. The direction that the committee went was to say that it’s not so important what they intended but what the effect is and how the comments are perceived. And that how they are perceived does not imply endorsement. He, too, tried to make this distinction in the advisory opinion.

Chair Cook asked Mr. Wayne if he would like to address on Rep Gara’s additional suggestion. Mr. Wayne did not know whether or not the advisory opinion would have to be redone or not; it’s built on some logical premises and legal conclusions from those, etc. Sometimes when you add something in, it means you have to juggle them around. It does bring back into it what he tried to take out which is the subjected intentions of the person making the statement. It brings it back to the question, “Is that going to be the standard?” It was his understanding based on the last case, that that was not the way the subcommittee wanted to go.

Rep Gara made a comment that he agreed that a person’s intent is irrelevant. He felt we only want to look at the results, not the intent.

Member Thomas moved that we adopt the opinion as drafted. Roll call vote: YEAS: Rep Gatto, Toni Mallott, Sen Olson, Sen Stevens, Conner Thomas, Rep Tuck, Gary Turner, Herman Walker, Chair Cook. Unanimous vote. Motion passes.

Mr. Wayne is thanked and excused.

MEMBERS SKIP ITEM #7 AND PROCEED TO ITEM #8

7. ADVISORY OPINION 11-01

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

8. LEGISLATION UPDATE: Chair Cook introduced Rynnieva Moss, Legislative Aide for Sen Coghill, to the floor to provide the committee an update on SB 89, on behalf of Sen Coghill who is away on business. Ms Moss stated that SB 89 is a product of several years of discussion within the committee, and Sen Coghill, who is a member of the Ethics Committee, has asked her to help him carry the bill. Ms Moss referred the members to a hand out of the sponsor's statement sectional and CS a paper that shows the difference between original bill and the CS. Ms Moss explained the CS and the changes made as follows:

- a. Section 1, page 2: Simply adds under Prohibited Conduct and Conflict of Interest and Exception to the Rule that includes compassionate gifts, which were passed in legislation a couple of years ago, dealing with organ donors.
- b. Section 1, two separate places on page 2, and on page 4: We have added statutory language that reflects an advisory opinion in 2004 that the Ethics Committee passed which states that a legislator can use his/her legislative mailing list for partisan purposes.
- c. Section 2: Is an attempt to "clean up" or to create a bright line for when a legislator or legislative employee needs to stop being involved in a constituent issue. Basically, when there's a hearing officer, then the legislator or staff are no longer involved in the issue, unless that legislator is representing someone, is a professional who would be representing someone, with the exception in case a legislator or employee would be a testifier in that hearing. The third provision allows for as long as the inadvertent ex parte is reported immediately, that does not create an ethics problem.
- d. Section 3, page 5, line 27: where it says, notwithstanding limitations under (a)(2) through (4), that was a request made by Joyce Anderson to change it from (a)(2) and (4) and include (a)(3), with which they concurred.
- e. Section 3, page 5, line 30: After campaign activities, the words "during the state travel", we've done this to make this particular section run with the same wording as page 6, line 13. They both address activities during state travel, and Ms Anderson recommended that we make the language consistent.
- f. Section 3: The overall of this section is an attempt to create a bright line for the discussion on what a legislator or legislative staff can or cannot do on state time. Sen Coghill wanted it strict and precise. He has tailored some language to say that a legislator could travel on state time and could participate in partisan activities as long as it was not during a normal workday between eight and five, excluding a meal break, which would be a lunch; that it was not on a day of the state or municipal election; that it was not during 30 days immediately preceding

an election; and that it could not be a fundraiser for political party or a campaign. (Under Prohibited Conduct and Conflict of Interest)

Rep Gatto interjected and stated that “excluding meal breaks” could be five meals in that timeframe. He stated that a meal break could be any extended amount of time. He suggested adding “lunch” or “Noon to one” or “no more than an accumulative hour”. Ms Moss stated it could be worded more precise and appreciated the feedback. Senator Stevens stated that if it is worded too specifically, such as adding a specific time as Rep Gatto suggested, as it only sets us up for getting us in trouble. He suggested bringing in some common sense and realize that people are going to be involved in such activities.

(An unidentified person speaks:) saying he works in a district where the sun is gone from November to January. If there’s something scheduled, people don’t even get up until noon. If there’s going to be a lunch break, it won’t be until the afternoon. If it’s narrowed down too specifically, you’re hemming people in.

Chair Cook suggested making the wording to “a meal break” and not pin down a specific time.

Ms Moss stated that Sections 3 & 4 will have the most discussion.

- g. Section 5: Ms Moss explained that this section makes public members of the committee accountable for unauthorized disclosure, the same as the legislative members of the committee.
- h. Section 6 & 8: Ms. Moss explained that they tried to make the statute, concerning a charity event, clearer, and removing any room for interpretation on it. First, charity events have to be sanctioned; but charity events could include more than just a free ticket to charity event--it could include a gift; they also want to make it acceptable to receive a ticket or a gift at the event that may have come from funds of a lobbyist, as long as it was valued under \$250; and make gifts valued over \$250 acceptable, from a non-lobbyist. The difference would have to be reported. This is already in statutes, but they wanted to make things clear make sure there were no misunderstandings about it.
- i. Section 7: On number 9, they added verbiage that says that it could be a ticket to a charity event or a gift in connection with a charity event.
- j. Section 8: Extends the time of reporting for a charity event or a gift of travel from 30 days to 60 days.
- k. Section 9: Allows for exceptions for disclosure if disclosures were prohibited by state or federal law. There’s a process where a person would submit a written request to refrain from making the disclosure.
- l. Section 10: Is another issue brought forth by the Ethics Committee. It allows an alternate to participate from the beginning of the proceeding to the end of a proceeding. It also provides that the Supreme Court Justice will also select one

alternate public member. It also allows that one alternate public member to have the same respect as other alternates and that is when they serve on a project, or on an issue, they're allowed to stay on the duration of the process.

- m. Section 11: Defining State Travel: The idea of this verbiage is to make things more clear. The significant difference between the CS and the original is that the original bill changed a lot of disclosure time limits from 30 to 60 days, and after numerous discussions with Ms Anderson, we changed it so that it only disclosures that were extended to 60 days were the charity tickets and gifts and the "gift of travel for the purposes of educating of a legislator".

#### THE FLOOR OPENED FOR QUESTIONS OF MS MOSS

Member Turner referred all to page 6 of section 3, number 4, by fundraising for a political party or a campaign: He would like a definition on the word "fundraiser". Ms. Moss stated that it was her understanding that any fundraising for a political party or a campaign would be prohibited. Ms Anderson stated that fundraising is already defined in statute.

Chair Cook asked for a current status of bill from Ms Moss. Ms Moss stated that the bill was in Senate State Affairs and the bill would be heard in approximately 2-3 weeks. Ms Moss was thanked by the committee and excused.

Ms Anderson commented that she reviewed the bill, which has been in place for the last two years now, and found two amendments she would like to see continued inclusion of this bill, and one is adding volunteers and educational trainees to the mandatory ethics training requirements. The other change was the definition of legislative employee to hourly employee. A third change is dropping Supply and other areas from the mandatory training. Chair Cook asked Ms Anderson about the change in State Benefit and Loans Programs. Ms Anderson confirmed that the change was already covered in the bill.

Motion moved by member Walker to go into EXECUTIVE SESSION.

3:45pm - Members went into EXECUTIVE SESSION

#### 9. ADJOURN