

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from June 14, 2012 FULL COMMITTEE MEETING Anchorage LIO, Room 220

DRAFT

1. **CALL THE MEETING TO ORDER:** Chair Herman G. Walker, Jr., called the meeting to order at 8:38 a.m. Members present: Senator Gary Stevens, Senator Donny Olson, (alternate for Senator John Coghill), Representative Craig Johnson Representative Chris Tuck, Toni Mallott, H. Conner Thomas, Dennis “Skip” Cook, and Gary Turner. Staff present: Joyce Anderson, Administrator. Also present via teleconference: Dan Wayne, LAA Legal
2. **APPROVAL OF AGENDA:** Motion made by Member Turner to approve the agenda as written. No objection. Motion passes.
3. **APPROVAL OF MINUTES:** Member Thomas made a motion to approve minutes of the Full Committee meeting held on February 23, 2012. No objection. Motion passes. Representative Johnson made a motion to approve minutes of the House Subcommittee meeting held on February 23 & 24, 2012. No objection. Motion passes. Member Cook made a motion to approve minutes of the Senate Subcommittee meeting held on March 22, 2012. No objection. Motion passes. Member Cook made a motion to approve minutes of the House Subcommittee meeting held on April 25, 2012. No objection. Motion passes.
4. **PUBLIC COMMENT:** None.
5. **CHAIR/STAFF REPORT:**
 - a. **Informal Advice Staff Report** - Ms. Anderson stated that staff reports for January, February and March of 2012 were sent out to members. April and May staff reports will be sent out shortly. She stated she was available for questions. Ms. Anderson referred members to the handouts of 2011 and 2012 Log Totals by Reason reflecting the number of inquiries and types of inquiries received. Ms. Anderson noted a substantial increase

in the number of calls this year due to redistricting year and a campaign year.

- b. Campaign Period Oversight Activities** - Ms. Anderson reported there have been many inquiries regarding candidate and campaign activities. She welcomed suggestions for an upcoming newsletter focusing on campaign activities. Senator Stevens commented it is unclear to him whether or not a legislator can accept an invitation from the Chamber of Commerce to give a speech in August if you are running for office. He suggested providing guidelines to legislators in the newsletter. Representative Tuck suggested including a note on participating in community council meetings if only one of five is in the legislator's district. Ms. Anderson offered to meet with them on the specifics after today's meeting. Representative Tuck added that another item to clarify in the newsletter would be on whether or not you can have your state license plate on your vehicle used in a parade that is not your district. Ms. Anderson commented that it was a permanent fixture on your vehicle, therefore, allowable. Senator Stevens and Representatives Johnson and Tuck stated that they had new business items to bring forth at the end of today's meeting.
- c. Ethics Disclosures** - Ms. Anderson referred members to the report in their packet. No questions by committee members.

6. BUDGET:

- a. FY 12 Budget Update** - Ms. Anderson referred members to the update in their packet noting that a new copier was purchased for the Ethics office. It has the capability of copying, faxing and scanning. The current fax machine will be eliminated. The Ethics budget for Commodities is over budget but funds in other accounts will be sufficient to meet the needs.
- b. FY 13 Approved Budget** – Ms. Anderson reviewed the allocation for Personal Services in regard to cost of living increases and merit increases. Funds were moved from one account to another and then moved back which resulted in no change from FY12 to FY13. The members discussed the reasons for movement of money versus requesting more funding in an account.

Members recessed at 9:00 a.m. until Brent Cole, outside legal counsel, arrived.

Members resumed at 9:05 a.m.

- 7. ADVISORY OPINION 12-02 requested by Ethics Committee – Use of State Resources – soliciting charitable contributions for a non-profit organization:** Mr. Cole presented the draft opinion beginning with the “Questions Presented” on page 1. The opinion looks at activities connected with the receipt, solicitation, and behind the scenes work involved with charitable contributions and charitable fundraising activities by legislators and their staff. Mr. Cole pointed out he was

asked to give an opinion on whether or not activities listed in the bullet points on page 1 would violate the Ethics Act. AS 24.60.030 addressed the prohibited conduct and conflicts of interests, and that this was his starting point for analyzing these issues. He referred to statute AS 24.60.030(a)(2), which states that you cannot use public funds, equipment, facilities, resources, etc., for a nonlegislative purposes for support of or in support of partisan political activity or the benefit of a legislator or legislative employee. This is what the Legislature enacted. It is consistent with the Legislative Ethics Act and purposes. The initial analysis is that you cannot use public funds, facilities or equipment for anything other than a governmental, nonlegislative purpose. He then stated that after that there are a number of exceptions that the Legislature has written in to that general rule. He explained from the second paragraph on page 2 that in 1998, the Legislature amended AS 24.60.030, and created an exception that a legislator may solicit, accept, or receive a gift on behalf of a recognized nonpolitical charitable organization, which was as a result of two Ethics advisory opinions: 94-6 and 96-4. It is his opinion that AO 96-4 contains unfortunate language because it drew the conclusion that the Ethics Code did not prohibit use of legislative office space, staff, and other resources to solicit contributions to host a meeting of the executive committee of the National Conference of State Legislators. He felt this was too broad a reading. It would support much greater activities envisioned by this hypothetical if you read it broadly. In his work with the Legislative Ethics Committee, Mr. Cole stated that he often returns to the purposes and policies of the Legislative Ethics Code. These are codified in AS 24.60.030 and 24.60.010: The Legislature finds that high moral and ethical standards among public servants in the Legislative Branch of government are essential to assure the trust, respect, and confidence of the people of this state. Upon interpreting what the Legislature intended, Mr. Cole stated that he goes back to those purposes. He stated that he believes that that statement in AO 96-4 is broader than should be and it is supported by the fact that in that case, it was found that the NCSL constituted a governmental purpose and when you find that there is a governmental purpose for what you are doing, it takes you out of improper conduct. Mr. Cole stated it was then that he was able to distinguish that particular opinion and went onto address the specific scenarios that were talked about in the original request.

Mr. Cole introduced the following:

Number 1 on page 4: Mr. Cole stated that there were two provisions that supported it: AS 24.60.030(a)(2)(A) and AS 24.60.030(a)(2)(I).

Number 2 on page 6: Mr. Cole stated he was not able to find any language in AS 24.60.030 that would allow the use of the LAA Print Shop for those needs.

Number 3 on page 6: Mr. Cole stated that the answer depended on how the word “soliciting” was interpreted. He stated that in his conclusion “soliciting” was not consistent with organizing and facilitating meetings. He stated that to him, “soliciting” was trying to receive something from somebody.

Number 4 on page 7: Same analysis in numbers 2 & 3.

Number 5 on page 7: Same analysis in numbers 2 & 3.

Mr. Cole stated that the bottom line is, “Are you using legislative resources for nonlegislative purposes?” The general rule is that you cannot, unless there is a noted exception and there was none.

Chair Walker opened the floor for discussion. Member Cook stated that Mr. Cole referenced the term “nongovernmental” and “nonlegislative”. The current term used in the statute is “nonlegislative” and Member Cook recommended discontinuing the use of the term “nongovernmental” and removing the hyphen in the use of either word. Member Cook also stated that there were some typos he had noticed. Ms. Anderson interjected that she and Mr. Cole had addressed the typos.

Representative Johnson stated that “governmental” may have been used on purpose to broaden it beyond NCSL to include other groups like PNWER (Pacific Northwest Economic Region) or CSG (Council on State Governments).

Mr. Wayne interjected that some of the AO’s of the 1990s, the opinions cite in AS 24.60.030(a)(2) the term used in the statute was “nongovernmental”, which may explain why the term is used in the opinion being discussed today.

Senator Stevens stated that NCSL and other national organizations are having heartburn about the investigations of ALEC (American Legislative Exchange Council), which is a partisan organization. Senator Stevens further asked where “partisanship” enters into this, if at all, and referred members to its usage on page 2. He stated that NCSL, CSG and PNWER are all nonpartisan. ALEC is being investigated on writing legislation. NCSL and CSG do not do that. ALEC is a partisan group made up of both democrats and republicans and 99% conservative.

Chair Walker requested Mr. Cole input on Sen Stevens’ question.

Mr. Cole stated that AS 24.60.030(a)(2) says, “A legislator or legislative employees cannot use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity....”, which he would preclude that, unless there is an exception stated below.

Chair Walker and Member Thomas interjected recommending that they return to the draft advisory opinion.

Member Thomas motioned that the opinion be adopted with the modifications mentioned by Member Cook. Member Thomas also suggested inserting a footnote stating the statute changed. Ms. Anderson presented the typos previously discussed by her and Mr. Cole, for the record:

- 1) On the bottom of page 2, second line from the bottom, it should say, “the committee went on **to** find”; adding the word “to”.
- 2) On page 3, in the second to last paragraph, the word capital should be capitol and the word “building” should be inserted. Also, the “I” in the word “If” should be in lower case where it says in quotes, “If we want to allow.....”
- 3) On page 6, second to last line, instead of a quote mark, there should be a period after the word “resources”. There should also be a quotation mark before the words, “A legislator.....”
- 4) The sentence beginning with, “But we interpret the term...” The word “solicit” should have quote marks.

The use of the “Print Shop” was discussed among the members and it was decided to postpone making any changes surrounding it or specifically defining it based on the numerous possible circumstances encompassing it. Members agreed to move forward to the issues at hand and work on scenarios that arise on a case-by-case basis.

Member Turner requested that members refer to page 8, second to last sentence from the bottom of the page, “On the other hand.....organization that has a clear governmental purpose are permitted.” Member Turner asked the members who will make that determination that there is a clear governmental purpose.

Mr. Cole clarified that it would be the committee that makes the determination.

Ms. Anderson referred members to the bottom of page 6, and top of 7, where it states that a legislator’s staff should not be considered a state resource. Ms. Anderson recommended adding a statement in this opinion clarifying that this applies to this opinion only since normally, legislator’s staff is considered a state resource for other purposes. This has been done where it has been stated in another advisory opinion where something applies only to that opinion.

In regards to the conclusion to which Ms. Anderson’s makes a suggestion, Mr. Wayne stated that the committee had adopted an opinion (AO 08-03) that reached a conclusion that legislative staff time is considered a state resource. Mr. Wayne stated that he also reviewed 24.60.030(e) that there is an exception that suggests that the Legislature interprets (a)(2) to make legislative staff a resource, a special exception that allows a legislator to use legislative employees to prepare and send out seasonal greeting cards. He further stated that that exception would not be necessary if staff were not considered a legislator’s resource. Once this opinion is adopted, there would be two inconsistencies in the above referenced.

Members had more discussion stating that there is no way to determine what may or may not transpire with or without noting the last sentence applies to this opinion only.

For the record, Ms. Anderson restated Member Thomas' motion as follows: To approve the advisory opinion with noted changes made during the discussion and the addition of the footnote regarding a statutory change in language.

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

Mr. Cole was thanked and excused from the meeting.

8. SB 89, LEGISLATIVE ETHICS: Changes implemented

Ms. Anderson stated that the SB 89 did pass the Legislature, noting that it had taken four years for the bill to pass. Ms. Anderson stated that she would briefly cover some of the changes. First, the statute has numerous changes; Appendix A from the 2012 Standards of Conduct Handbook has already been updated to reflect the changes and will be emailed to "all-users" in August. The bill becomes effective August 22, 2012. Ms. Anderson stated that Legislative Council may approve a charity event if the ticket entry fee is greater than \$250, which now requires the filing of a disclosure. A new disclosure form has been created to allow for disclosure. Another change is the reporting deadline for filing a "Gift of Travel" disclosure from having 30 days to file to having 60 days to file. The disclosure forms reflecting the new filing requirement has already been made. Ms. Anderson stated that the term "trainee" was changed to "legislative intern", required to complete ethics training. Another change was a section that codified our Advisory Opinion 09-02 regarding disclosing a close economic association if you are in a trade or profession that does not require that information to be disclosed. Also, an alternate member was added to the Ethics Committee. Ms. Anderson referred members to the green section in their packets which contains the new disclosure forms mentioned. She stated that after reviewing the form last night, the explanation currently on the "Gift Related to Sanctioned Charity Event" form should contain language stating the lobbyist dollar amount restriction, which is still no more than \$250. The language would be added to the Family Member form as well. Ms. Anderson stated that if anyone else had changes to the forms to let her know. Ms. Anderson thanked the Legislature, legislators and committee members for all of their efforts on SB 89. In addition to clean-up language in the Bill, Ms. Anderson also pointed out the last section of the Bill that contains changes in the definition of "legislative employee". She stated that previously, certain positions had been included in the definition but is now being removed. Ms. Anderson stated that she was pleased with the Bill.

Ms. Anderson asked committee members in regards to appointing an alternate public member if the committee wanted to proceed in getting the alternate member on board now or wait until January of 2013. Members discussed the matter on whether there was an urgency or not and determined that it could wait until January. Ms. Anderson stated that on July 1, the chief justice will be

changing and offered to send a letter to Dana Fabe, who will be the new chief justice of the Supreme Court, informing her of the committee's intentions.

Members recessed for 10 minutes.

Members resumed at 10:20 a.m.

Skiff Lobaugh, LAA Personnel, joined in via teleconference

Paul Dauphinais, APOC, joined in via teleconference

9. USE OF STATE RESOURCES – LEGISLATIVE OUTREACH: Ms.

Anderson explained that when she conducted interim meetings at some of the LIOs last year, legislators and staff asked many of the same questions regarding redistricting and use of state resources. Ms. Anderson stated that she would like guidance in this area to provide legislators when presented with questions relating to these issues. More specifically, when does a sitting legislator begin representing the new legislative district lines, for purposes of using state resources; and may a newly elected legislator use state resources prior to being sworn in, for outreach in the new legislative district. Ms. Anderson stated that there were no advisory opinions addressing these questions, nor paperwork from the last redistricting which was in 2001. Ms. Anderson stated that her recommendation is that the new district boundaries should take effect on the day after the General Election. The reason is because campaigning and fundraising activities are over so the use of state resources for conducting legislative outreach in the new district boundaries would no longer be an issue. Also, newly elected legislators begin working on issues related to their districts while legislators who were not seeking another term start to wind down their offices. Ms. Anderson stated that she is also asked questions related to the POET account funds and campaign funds, which are managed by APOC, which is why Mr. Dauphinais was invited to today's meeting. Ms. Anderson noted that there could be a ripple effect on whatever transpires today at this meeting in relationship to staffing, which is why Mr. Lobaugh, LAA Personnel, was invited today, as well.

Member Cook acknowledged Ms. Anderson's concern regarding legislators whose districts have changed and added that newly elected legislators have to contend with the fact that they have no access to state resources because they have not yet been sworn in.

Ms. Anderson responded to Member Cook and members that the statute covers only people who are covered by the Ethics Code, which is what she meant by there being a ripple effect.

Member Cook stated that he felt newly elected legislators should have the same access to state resources as the incumbent, noting that it is likely the newly

elected legislators do not have staff, therefore at more of a disadvantage than sitting legislators.

Representative Johnson stated that it was his belief that newly elected legislators did not have access to state resources until they are sworn in. Member Cook reiterated that this creates an unfairness situation.

Member Thomas stated that he felt that the ethical question at hand is not about leadership not going providing resources to newly elected legislators, but from his point of view, it is whether it is a violation to use state resources if available when you have not yet been sworn in. If state resources are not available until after being sworn in, then it is not in the Ethics Committee's control.

Members questioned whether or not APOC had any jurisdiction over an elected legislator, but not an incumbent, not yet sworn in. The question was directed to Paul Dauphinais with APOC. Mr. Dauphinais stated that they did have some jurisdiction in that they do govern under statute 15.13.116, Disbursement of campaign assets after election, on what they can do with their campaign assets. However, when it comes to state resources, that's a different issue, and they don't have jurisdiction over that other than for election purposes, the use of state money or a political subdivision and how that money is used, which is a different statute, 15.13.145, Money of the state and its political divisions, which falls under the state or municipality going for or against a particular ballot proposition.

Chair Walker asked Mr. Dauphinais if he was saying that newly elected legislator fall under APOC's jurisdiction, however, only over campaign funds and not state resources. Mr. Dauphinais confirmed that was correct.

Senator Stevens commented that they were caught in a tough position, reminding members that there were that three districts he believed that are about a thousand miles wide, that if you were to be elected, not as an incumbent, he cannot see how state funds could be used. He further stated that as Senate President, he can make a request to travel and he stated that he did not feel he had the right to give travel funds to someone who has not yet been sworn in. He stated that he would like to direct this question to Skiff Lobaugh, LAA Personnel. Mr. Lobaugh stated that with respect to travel, there might be precedence that occurred for finance committee issues; however, he stated that he mainly works on the issues dealing with staff, explaining that staff works for you, not the elected official. If you wanted staff to go to something, you could do that for the new legislator even if that person has not yet been sworn in, because they do not work for the legislator, they work for the presiding officer.

Representative Tuck stated that this was a gray area. He stated he recollected when he was first elected to serve and had not gone through ethics training yet; he experienced a gray area in that AOGC flew him to Prudhoe Bay for a tour. He did not have to disclose it because he was still a candidate elect and had not yet

been sworn in. This scenario should be revisited if the committee decides on making any changes today.

Member Cook presented another scenario. An incumbent, who has a new district, where half or more in his current district are new to his district. The incumbent has not yet been sworn in. Is incumbent able to use state resources to service that new district? The incumbent is now in the same scenario as the newly elected. Neither are sworn in, therefore, they should not be able to use state funds until then.

Representative Tuck stated that they should allow the overlap. Other members weighed in with more scenarios and stated that the constitutional sworn in date, which cannot be changed by them, should be right after the General Election, which would eliminate this gray area.

Senator Olson (Alternate Member for Senator Coghill) stated that the constitution sworn in date is not a when you are sworn in as an official to represent a certain district. He stated that you are sworn in as public officials and not restricted to be Senator from that area. This applies to committee you serve, not just your constituents. It does not swear you in to a specific district or bound you to a specific district. He stated that this was his interpretation of the swearing in.

Member Thomas stated that the committee is not taking a position with respect to the use of state funds. The committee is not saying that new legislators are prohibited. That is something the committee does not have control over. Our concern is whether it is an ethical violation if they do, if they have access to funds. He stated he still feels that the answer is no. They should still be able to serve the district if the funds cannot be made available for whatever reason.

Representative Johnson stated that he believed what they are really talking about is state facilities, not state funds; for example, where would a newly elected official meet? They will have access to the building but who haven't been sworn, haven't taken ethics training, and have no office to meet in. If they were to ask LAA for an office or to use a conference room, LAA would have to say no because they are not a legislator yet. They won't have phone numbers, e-mail, stationery, etc.; there is a provision, which is 4 or 5 days before being sworn in, where you have a computer assigned to you, and so forth, you're paid to be there prior to session. Representative Johnston stated that if you wanted to travel somewhere in advance, for a legislative purpose, that once the office allowance account kicked in, you would be able to reimburse yourself in January. He stated he didn't think it was unethical to reimburse yourself. The fact of the matter is that between November and January, everyone has two legislators.

Chair Walker expressed that it was his opinion that the swear in date be the date you may utilize state resources, even if it means paying for a trip yourself and reimbursing yourself two months later.

Member Turner questioned how you would be able to go back and reimburse yourself if you were not sworn in at the time you took the trip; how would you be able to ask for reimbursement?

Representative Johnson responded by clarifying what he had said was that you could reimburse yourself with the office allowance account, which you are given every year to establish your office. Representative Johnson further stated that he did not think that would be unethical to reimburse yourself, provided it had a political purpose. He also stated that he did not know if you went to the president and sought reimbursement that s/he would reimburse you with other state funds.

Member Turner stated that it would be his opinion that the office allowance account would only be effective after you were sworn in and not used retroactively.

Representative Johnson responded that that may be correct and suggested that maybe they should request an opinion on it.

Representative Tuck stated that he did not know whether or not you could get reimburse without having been sworn in and presented a question to APOC asking how early can a newly elect establish a POET account after the election and can the POET account be used to reimburse yourself for travel or should you use leftover campaign funds before establishing your POET account?

Mr. Dauphinais stated that if a candidate is elected, you can transfer campaign contributions by to a Public Office Expense Term Account. The POET account was somewhat modified under HB 333, passed at the last session, but from APOC's perspective, once the election is over, and a candidate has been elected, that individual is no longer a candidate, and at that time, that money can be transferred to a POET account.

Member Walker asked Mr. Dauphinais if they can create their POET account even if they haven't been sworn in?

Mr. Dauphinais stated that the statute that governs the disbursement of campaign assets, 15.13.116, did not give a specific date of when it can be dealt with, reading the statute as follows:

“A candidate who, after the date of general, special, municipal, or municipal runoff election or after the date the candidate withdraws as a candidate, whichever comes first, holds unused campaign contributions shall distribute the amount held on February 1 for general election or within 90 days of a special election.”

Mr. Dauphinais corrected himself restating the words, “shall distribute the amount held on February 1”, clarifying that it goes into the session.

Member Cook asked if that meant they cannot use those funds until after the of session starts?

Mr. Dauphinais stated that he would need to look into this more before responding; stating that he did not know if there were any advisory opinions issued.

Member Cook asked if that statute he read say that they had to transfer that money by that date or is it implying that they could not use the funds until that date?

Mr. Dauphinais stated that it did not imply a date about using them and re-read the last portion of the statute and added that he would check to see if there are any advisory opinions stating when the funds can be used.

Senator Stevens stated he wanted to point out that not all candidates have POET accounts, and not all candidates will end up with excess money in their campaign account. He further stated that they do pre-fund candidates before they are sworn in. For example, they fly them into Juneau, they fly their family to Juneau, and they allow them to transfer home goods to Juneau. Sen Stevens stated that as unfortunate as it seems, he agrees with Chair Walker in that it should be when the candidate is sworn in. He stated that he did not believe legislators should be allowed to travel on state funds to their district before they are sworn in. He stated that although there is an advantage to the incumbent as Member Cook has stated, and he also sees a necessity for newly elected, non-incumbent who had been elected to have the opportunity to meet with their constituents before session begins; noting that in January, once session begins, there isn't time to travel in your new district and hear their concerns; it is difficult to get to some of the districts in small villages that are so far away, like in his district. Those people do not have a chance to voice their concerns with their legislator which is unfortunate since they are the people who elected you to represent them.

Representative Tuck stated that he felt that they should allow the incumbent a little bit of overlap, but on the same hand, should that same legislator be allowed to use state resources to do a mailing to his new district before being sworn in? This would be an advantage to the incumbent that the newly elected official would not. Representative Tuck stated that he recollected when he was a newly elected official how difficult it was to not have an office, phone line, fax machine until after the first day. It would be easier if you had your office set up a week in advance because once you are sworn in, activity takes off. People are introducing Bills and you just don't have the means to communicate from one office to the other. He restated that he favored an overlap for a person to begin representing people in the new areas for incumbents, but would recommend restricting their ability to use state funds for outreach in the new district.

Chair Walker asked Rep Tuck for more clarification on what he meant by “overlap”.

Representative Tuck explained that an incumbent can still go door to door or attend the community council meeting, but could not do any mass mailings. Representative Tuck stated he would have think it through this more but provided clarifications to Chair Walker’s questions, stating that they need to determine what a newly elected official can do and what can s/he do with what state resources before being sworn in, so that Ms. Anderson has guidance when presented these questions.

Representative Johnson provided more testimony on his point of view, stating the bottom line is he preferred the swearing in date.

Member Cook testified that the committee has already taken a position that sitting legislators cannot expense state funds to represent the new district that they might have until they officially represent that district. Member Cook asked if Representative Johnson felt that that should apply to both the newly elected and sitting legislators? Representative Johnson replied with yes. Senators Stevens and Olson both stated to the members that they disagreed. Sitting legislators should be able to use state resources in their new districts before being sworn in.

Chair Walker reminded members the issue at hand which was the question Ms. Anderson would like guidance on because she was asked this question was, “Should a sitting legislator be able to utilize state funds in their new districts?” and “when can a sitting legislator begin using state resources in their new areas?” Ms. Anderson stated that in AS 24.60.020(a), it reads, “**this chapter does not apply to (1) person elected to the legislature who at the time of election is not a member of the legislature.**” Ms. Anderson stated that even though there’s an inequity to and members have been voicing, that is what is in statute.

Senator Olson stated that as a sitting legislator, he is already sworn in; therefore he should be able to use state resources to serve his new district.

Mr. Dauphinais provided quotes from APOC advisory opinion, AO 11-10-CD, (also found in today’s packet). The question presented to them was about using a Public Office Expense Term (POET) account. APOC’s analysis states that the POET account may be used to communications “associate with the candidate’s serving as a member of the legislature”. “A POET account may be used to provide newsletters or mailings (electronic or hard copy) to constituents about the legislator’s activities during session”. Further in the AO, it states, “APOC staff believes that if an incumbent legislator communicates with potential new constituents, not those who elected him/her, or those who have specifically requested information, to provide positive information about his/her activities in the Legislature, it is a reasonable interpretation that the communication is intended to influence an upcoming candidate election or ballot measure”. Mr. Dauphinais

stated that the wording, “and incumbent legislator communicating with new constituents who have elected him/her”, is an issue for APOC. Senator Stevens directed the following question to Mr. Dauphinais for clarification, “Is it correct to say that you cannot use a POET account if you are using that money to affect an election--you’ve not been elected yet--but are you saying that someone could use it if s/he has already been elected and has not been sworn in, and then come back and use those funds retroactively?” Mr. Dauphinais replied that the wording from the advisory opinion does refer to an “incumbent legislator”, but that there is a clause that refers to “not those that elected him/her”. Mr. Dauphinais stated that it was his interpretation that if an incumbent has been elected and his/her district has been expanded or changed, that individual is now communicating with constituents who have elected him or her. Senator Stevens added that it would not affect an election because they have already been elected. Mr. Dauphinais replied that was correct. Mr. Dauphinais stated that because this is a different situation, although it may be applicable now, it may be appropriate to request an opinion from APOC regarding POET accounts and new legislative districts. Ms. Anderson asked Mr. Dauphinais for clarification in his response to Sen Stevens, asking if it was APOC’s interpretation of the advisory opinion that if a sitting legislator has a POET account right now, the day after the election, in which they were elected, they could use that POET account for the new district. Mr. Dauphinais confirmed Ms. Anderson’s statement.

Senator Stevens stated that it was his opinion that they agreed that we cannot incur expenses for new legislators. Chair Walker responded to Sen Stevens that the committee agreed that new legislators cannot use state resources until they are sworn in. Member Thomas stated that he did not see how the committee can take a position on that since they are not subject to the Ethics Act. Ms. Anderson stated that if the legislator elect were to call her, who is a non-incumbent, she would tell him/her that s/he is not covered by the Ethics Act; therefore s/he has no use of state resources until they are sworn in.

Member Turner, Chair Walker and Sen Stevens restated the interpretation provided by Mr. Dauphinais of APOC’s advisory opinion, page 2, paragraph 4. Senator Stevens commented that if Sen Olson requested money to travel to his new district, after he was elected, he would approve it.

Representative Tuck stated that he understand the geographical challenges the senators and representatives have with their new districts, but to keep it on a level playing field, he stated that he felt it was good advice that they could use their POET accounts for outreach. For the newly elected, they should be able to use their POET accounts for outreach; and for incumbents, they can use their POET accounts for outreach; however, in regards to using state funds, after the election, for incumbents to use state resources for outreach in their new districts, it should be limited to his/her current district until the transfer actually happens of until being sworn in. It does not weigh well in with the challenges the senators present here have expressed, but this is why in the beginning of their discussion today he

was in support of an overlap for incumbents to use state resources for outreach in their new districts because they are sitting officials. Representative Johnson provided some scenarios on use of state resources; one involving a plane ticket and another involving an employee; such as a sitting legislator requesting that the Press Secretary issue a press release, to go to their new district. You could not fund every trip to a new community, but you don't want to prohibit someone from sending out a press release. Both are consider use of state resources, just varying in degree. Senator Stevens stated that he felt this was not the committee's business; we've got funds and budget to allow legislators to travel; the committee should not be involved in this. Representative Johnson stated that if the funds are they, it should be up to the presiding officer.

Member Thomas made the following motion, "When does the sitting legislator begin representing in the new legislative district for purposes of using state resources?" Member Thomas stated the answer to the motion would be, "when elected, after the General election."

Representative Tuck requested to add, "their choice, after elected"; meaning that prior to an election, you have an influence on the election, so you do not want to use state funds, but after the election, that is no longer the case. For example, if a sitting legislator wants to send out a mailing, s/he can choose to send it out to his/her existing district, or choose to send out to the new district, or choose both. After the election, the legislator should be allowed to use state resources as s/he sees fit, with issues in his/her district. This is allowing him/her outreach in the new district, if they choose, allowing him/her that overlap. Representative Tuck stated that this should not be made a requirement that a legislator has an obligation s/he must meet for that new area, but an option. Member Thomas suggested added the words before the question, "For purposes of the Legislative Ethics Act". Members tossed around adding, "after the election has been certified" and/or "after the candidates have been certified" and/or a "after a certified tie". After various discussions amongst members, the motion was revised and restated as followed: "**A sitting legislator may begin to use state resources in the new district after the election has been certified**". A roll call vote was taken: YEAS: Sen Stevens, Sen Olson, Rep Johnson, Rep Tuck, Skip Cook, Toni Mallott, Conner Thomas, Gary Turner, Chair Walker. Motion passed unanimously.

- 10. USE OF STATE RESOURCES – CAMPAIGN REPORTS:** May legislators use legislative computers for completing campaign reports? (Tabled from February 23, 2012 meeting.) - Chair Walker stated that the committee approved use of the Capitol Wi-Fi and APOC computers to complete mandatory candidate/campaign reports at the February 23, 2012 meeting. The discussion raised the question of whether or not the use of a legislator's office computer could also be used for the same purpose, due to the fact that many legislators are out of the home districts during the legislative session and in Juneau during session and during the time when some reports are due.

Senator Olson stated that in rural Alaska, internet coverage is spotty, and that sometimes the state owned computer is their only way to file reports, especially when facing a deadline.

Senator Stevens stated that he felt this would fall under *di minimus* usage of the state's computer system. He also commented that they are in a transitional period where APOC is encouraging them not to file paper reports, due to the fact that APOC has to re-enter the information in their database themselves, unless they are completed electronically. Additionally, there is virtually no added cost to the state for using the state's computer to file campaign reports.

Chair Walker stated the fact that there was no private or personal benefit to the person filing. Also, this is a requirement pursuant to statute.

Representative Tuck stated that the other side of this discussion was that sitting legislators have access to state computers whereas opponents, non-incumbents do not. However, non-incumbent opponents are allowed to use APOC computers; therefore, he supports the use of state computers for purposes of campaign reports.

Mr. Wayne stated he wanted to comment on two points. The first one is the policy under disclosure and idea behind filing electronically, which was to speed up the gathering of the information and the publication of this information to benefit the public. He stated that there is a public benefit in getting the information to APOC sooner rather than later. Mr. Wayne stated that his second point was that he took the liberty of checking with the Legislative Information Office (LIO) yesterday, and that it was his understanding they have computers available for public access; at least one computer at every location around the state.

Ms. Anderson stated that there needs to be a bright line that legislative employees may not help legislators with this function because it is a campaign task and employees cannot use state time to work on a campaign.

Representative Johnson asked if it was acceptable for an employee to use his state computer, after hours, not on state time, to work on his campaign, by filing his campaign report. What if staff brought in their own computer and used the capitol Wi-Fi?

Member Turner stated that in their packets, Item 10, member Cook made a good point on 8(b), page 3, first paragraph, when he states that filing the financial disclosures about the campaign has a legislative purpose. If it has a legislative purpose, what is the difference if the legislator does the report or the staff does the report? He stated that he agreed with member Cook in that this is not supporting a campaign, nor is it about campaigning; rather it is a disclosure and a state requirement.

Member Thomas motioned that legislative computers may be used for filing required candidate campaign reports. A roll call vote was taken: YEAS: Sen Stevens, Sen Olson, Rep Johnson, Rep Tuck, Skip Cook, Toni Mallott, Conner Thomas, Gary Turner, Chair Walker. Motion passed unanimously.

Member Turner presented an additional motioned that “a legislator or legislative staff may use state computers to file state required campaign disclosure reports.”

Rep Tuck suggested adding that employees cannot be compensated. Rep Johnson stated that his wife was the treasurer, not an employee and members discussed adding the words “legislative staff or designee”, or “designee, someone designated by the legislator”.

Mr. Wayne interjected that AS 24.60.030(b) reads, “a legislative employee may not on government time assist in political party or candidate activities, campaigning, or fundraising. A legislator may not require an employee to perform an act in violation of this subsection.”

Member Turner stated that this is not campaigning; rather, it is disclosure that is required by law. It is also not fundraising; it has a legislative purpose because it is required of the legislator. Ms. Anderson stated that candidate activity is different than campaign activity, and would include filing a report. Member Turner replied that the term he was using was “campaign disclosure”. Ms. Anderson noted that employee is mentioned as performing the filing but cannot file campaign reports while on government time. Ms. Anderson further stated that the Ethics upcoming newsletter should be clear on what the committee’s intent is on these recommendations. Rep Tuck restated that that is what he meant earlier by saying employees cannot be compensated. Ms. Anderson stated that adding “not on government time” would clarify matters because employees can be compensated for campaign work. Members discussed using the term “notwithstanding”, but Mr. Wayne explained that use it would mean that even though the statute says one thing, the committee says another thing. Ms. Anderson stated that “government time” is defined in their handbook which could be inserted in the motion.

The motioned was amended as follows: **“A legislator or legislative employee or designee, may use state computers to file required candidate campaign reports. A legislative employee may not perform this on government time.”**

A roll call vote was taken: YEAS: Sen Stevens, Sen Olson, Rep Johnson, Rep Tuck, Skip Cook, Toni Mallott, Conner Thomas, Gary Turner, Chair Walker. Motion passed unanimously, as amended.

- 11. FACEBOOK:** Chair Walker introduced this item as previously tabled from the February 23, 2012 meeting, which asks members if the use of Facebook presents any ethical concerns. Ms. Anderson made note that Legislative Council Com-

mittee Aide Cathy Tilton was present and provided members a brief synopsis of this issue stating that Legislative Council is the body that approves the use of Facebook by legislators and staff. At previous Legislative Council meetings, the question was asked if there were any ethical concerns using Facebook, specifically, whether or not the advertisements posted on a Facebook page, posed any concerns. Since Facebook has control over posting of the ads, there are no ethical concerns. Ms. Anderson suggested writing a letter to Senator Linda Menard, Chair of Legislative Council, of the committee's discussion and decision.

Member Turn made a motion that **the Ethics Committee Administrator send a letter to Legislative Council stating that there are no ethical concerns with usage of Facebook. Motion was approved by members present.**

12. OTHER BUSINESS:

Title Usage: Representative Johnson stated that a constituent complained to him about a legislator going door to door, campaigning in their new district, identifying him/herself as a legislator and asked members if this was a violation of the Ethics Act. Ms. Anderson replied that the informal advice she has been providing in the past has been that the title, senator or representative, is yours to use, as long as you are not denying anything or offering anything that is quid quo pro. For example, if you send a personal letter of recommendation, your title can be used, which would apply in this scenario because you are not saying you're going to do this in exchange for you doing that. Rep Tuck stated that he agreed with Ms. Anderson's response, but that the legislator also should not be saying is s/he is their new representative, until s/he has been elected.

Questionnaires: Representative Johnson stated that his second question was regarding questionnaires from "Right to Life", "Planned Parenthood", "NRA", "Save the Whale", stating that they will endorse you if and give monetary distributions to his campaign, if you answer this questionnaire. Some even say if you are 100%, you'll get our endorsement; if you're 80% and your opponent is less than that, then you will and they won't. Rep Johnson stated that he felt it would be an ethics violation if he said he would support or vote for an entity in exchange for compensation. He has been returning these questionnaires, but would like something stating that if a legislator sells his/her vote, that this is an ethical violation.

Chair Walker asked if an advisory opinion could be requested during this election cycle. Ms. Anderson stated that they have 60 days by statute but it might be possible to accomplish it earlier noting that the committee could vote on it via teleconference if it were the only item on the agenda.

Rep Johnson expressed why he felt an advisory opinion was important to have accomplished before the election, stating that all of the legislators have received these questionnaires and if someone new running, unknowingly fills it out and receives compensation, he would like to know if s/he was in violation of the

Ethics Act. Even if a legislator is in favor of one of these groups, the fact of the matter is if you answer the questionnaire for their campaign contribution, you have “bought their vote” and are, in his opinion, in violation of the Ethics Act.

Senator Stevens stated that he was uncertain of the necessity; adding that once you are elected in, you can change your mind on what you said you were going to do, as we have seen past presidents of the United States do; for example, stating there would be no new taxes and then turning around and voting for new taxes; someone would be foolish signing a questionnaire in the first place, knowing that once they are elected they have to follow through; especially someone new running. They want to make the best impression for constituents. You should not be tied to any promises, stating that he was not certain that this was a violation of the Ethics Act.

Chair Walker responded that is what they need to determine; it may not be a violation but the advisory opinion that would address the issue and concern.

Mr. Wayne requested clarification on what the advisory opinion he would be drawing up, asking members if it was unconstitutional to limit what a person says during their campaign? He stated that it was not the Ethics Committee to determine this. If he understood correctly, what the committee was asking, the question is, “Can a person, covered by the Ethics Act, who is running for office, sign a pledge to change one kind of a law or another if they win in exchange for an endorsement.” He stated that he wondered if that was purely campaign territory. It doesn’t appear that they are using legislative resources, so what is the issue for the committee?

Chair Walker asked if this was a question for APOC instead.

Mr. Wayne stated that the ethical issue is they are a quid quo pro and the issue does not rise to that level. It is simply campaigning. In campaigns, everyone gives assurances to potential voters including groups that are deciding whether or not they might endorse somebody. Everybody knows that once the person gets in office, they have to, to some extent, maybe modify their position depending on new information that they learned or politics, etc. It seems to him that it’s campaign speech, and should be an APOC issue. It would be ideal to ask APOC to address but it sounds like they are concerned with meeting a timeframe. The committee does not have the ability to require an APOC to issue a position. Chair Walker asked the committee members if they felt this was something the committee should address or if they felt APOC should address this.

Rep Tuck stated that for incumbents, he felt that this was a separate issue because they were sitting legislators and promising a position in return of influence, monetary gain, or support, or a vote; there’s an undue influence present and being put in that position. He stated that an advisory opinion coming from this committee would be nice for incumbents that the whole public is aware of, such as those

doing the survey, those answering the survey, and those reading the survey, rather than the “statements” or commitment they ask you to sign and make, which he believes is wrong or at least questionable.

Rep Johnson stated there are some that ask for your opinion, which is different, and some ask point blank, “will you vote?” Some provide Bill numbers.

Mr. Wayne interjected that there is a prohibition in AS 24.60.030(e). It reads: *A legislator may not directly, or by authorizing another to act on the legislator’s behalf, (1) agree to, threaten to, or state or imply that the legislator (or incumbent--someone who is covered by the Act), will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person’s decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value.* Mr. Wayne stated that when it comes to legislators, they would need to take care about how they phrase their comments and preface it by saying this is my opinion; but as Rep Johnson said, they might not want to say, I promise that, if I’m elected, that if you give me this money I’ll vote this way. That would be prohibited.

Member Turner stated that he felt that would cover the incumbents and be a news-letter item, for publishing even faster and before August, however, he was in favor of APOC handling the non-incumbent candidate issue.

Chair Walker stated that based on testimony, the language in the statute, it appears the committee does need an advisory opinion. Chair Walker stated that Ms. Anderson would push the process and talk to APOC about non-incumbents and see if there were something they could do. Ms. Anderson stated that she would work with Rep Johnson.

FACEBOOK:

Representative Tuck stated that he wanted the committee to address the Ombudsman’s office using Facebook as a recruiting tool. He stated that Facebook contains a lot of personal information and that he did not agree to the requirement of an HR person requiring a “recruitee” to open up their Facebook page as part of their interview. Ms. Anderson stated that she was not aware of them using Facebook in this fashion but that she was aware of the Ombudsman’s office using Facebook by creating a Facebook page of themselves to use for recruiting. Representative Tuck stated that he would like to amend approval for usage of Facebook to use as a recruiting tool for advertising positions only. Ms. Anderson agreed to follow up with the Ombudsman’s office that this was indeed their intent. Presently, the Ombudsman’s office does not have approved access; members agreed that it is a moot point and Representative Tuck withdrew his request.

13. PUBLIC SESSION: None.

14. ADJOURN: Representative Johnson made a motion to adjourn the meeting at 12:10pm. Motion approved.

DRAFT