# Alaska State Legislature

**Select Committee on**
**Legislative Ethics**

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MINUTES from June 28, 2012
FULL COMMITTEE MEETING
Anchorage LIO Library, Room 210
(Teleconferenced)

**D R A F T**

1. **CALL THE MEETING TO ORDER:** Vice Chair Gary Turner called the meeting to order at 1:03 p.m. Members present: Representative Craig Johnson and Representative Chris Tuck; Members present via teleconference: Senator Gary Stevens, Senator John Coghill, Toni Mallott, H. Conner Thomas, Dennis "Skip" Cook; Staff present: Joyce Anderson, Administrator. Also present via teleconference: Dan Wayne, LAA Legal; Member absent: Chair Herman Walker, Jr.

   Others present: John Alcontra, NEA; Cathy Tilton, Senator Linda Menard's office; Others present via teleconference: Joelle Hall, AFL-CIO; Peggy Wilcox, Alaska Public Employees Association; Paul Dauphinais and Jerry Anderson, APOC

2. **APPROVAL OF AGENDA:** Motion made by Member Thomas to approve the agenda as written. No objection. Motion passes.

3. **PUBLIC COMMENT:** None.

4. **ADVISORY OPINION 12-03 Requested by Ethics Committee: Signing of Pre-election Pledges by Incumbent Legislators:** Vice Chair Turner invited Dan Wayne, LAA Legal, to provide a recap of the draft advisory opinion. Mr. Wayne stated he focused on the question which was somewhat limited to campaign contributions or campaign endorsements. A campaign contribution and a promise of an endorsement were treated the same in the draft opinion. Both statutes, AS 24.60.030(a)(1) and AS 24.60.030(e)(1), were referenced. In (a)(1) a legislator cannot solicit, agree to accept, or accept a benefit other than official compensation

for the performance of public duties. Additionally, *this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions.* In a case where a contribution is unlawful and violates 24.60.030(e)(1), it might also violate 24.60.030(a)(1). If the contribution was permitted, it would not violate (a)(1).

Mr. Wayne divided the draft opinion into two areas for discussion; **I. Endorsements** beginning on page 3; and **II. Contributions** beginning on page 4. He first ruled out endorsements based on the language of 24.60.030(e)(1). Endorsements are not prohibited when in exchange for a pledge or completing a candidate questionnaire.

The definition of "benefit" or "thing of value" under AS 24.60.990(a)(2) becomes important in this discussion. Under (a)(2), almost anything a person campaigning would want, including an endorsement or contribution or any kind of campaign support, is excluded from the definition of "benefit" or "thing of value". Mr. Wayne focused on 'endorsements'. Under 24.60.030(e)(1), a legislator cannot base a decision on, or agree to, threaten to, or state or imply he will take or withhold political action, in exchange for a person's decision to provide or not provide a thing of value. This paragraph does not prohibit accepting endorsements since endorsements are not included in the definition of a 'thing of value' or are they expressly mentioned in AS 24.60.030(e)(1).

As to 'political contributions', AS 24.60.030(e)(1) expressly uses the term 'political contributions' as well as 'a thing of value'. If (e)(1) did not expressly include 'political contributions', they would fall under the definition of a 'thing of value' and be excluded; which would make it okay to take a political contribution and agree to, threaten to, or state or imply a legislator is going to take action in exchange for a political contribution. Because the Act adds 'political contribution' back into the prohibition, the exclusion in the definition of a 'thing of value' is cancelled out. In conclusion, Mr. Wayne pointed out 'endorsements' are permitted but 'political contributions' are not because they are expressly referred to in AS 24.60.030(e)(1).

Vice Chair Turner thanked Mr. Wayne. Ms. Anderson and Mr. Wayne shared some ideas about the opinion just before this meeting and have a few amendments. Mr. Wayne was asked to present them to the members. Senator Stevens asked if they were available in writing. Ms. Anderson responded because they were discussed just before this meeting, they were not available.

Mr. Wayne made the following suggestions:

- Change the roman numerals in the body of the text to correspond to the conclusion and consistent with previous opinions.
- Switch the order of paragraphs in the conclusion to follow the discussion in the body of the opinion. Endorsements first and Political Contributions second.

- Page 2, footnote, change the citation *Western Tradition P'ship v. AG)* to *Citizens United v. F.E.C. for the rule that government restrictions upon speech are not per se unlawful, but rather may be upheld if the government demonstrates a sufficiently strong interest* and delete the bottom three lines and second half of the fourth line that references the Montana case.

- Page 3, where AS 24.60.030(e)(1) is quoted, the words "a political contribution" are bolded and italicized. The words "donate or not donate to a cause favored by the legislator" should be bolded and italicized since this prohibition is mentioned a couple of times in the opinion as well.

- Page 4, fifth line from the bottom change the word "explicit" to "express", since the words "express" or "implied" are words that have been used in other communications issued by the committee.

- Page 4, add a footnote after the word "implied". "An example of the Ethics Committee interpretation of the terms "express" and "implied" is noted in the Ethics Committee's Rules of Procedure, Section 14(d), September 27, 2011".

Ms. Anderson offered two more suggested changes.

- Page 1, first paragraph, footnote 1, last sentence, after the words, "persons elected to the legislature who", the word "are" should be deleted.
- Page 3, after the reference to AS 24.60.990(a)(2), add a foot that provides the whole definition of the statute. The entire statute is important to the context of the opinion; i.e., "does not include campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support".

Mr. Wayne offered two grammatical changes.

- Page 6, second line, remove the phrase, "it is more likely than not that". The language is not needed.
- Page 6, same line, change the following: "with the understanding" to "with an understanding". Grammatical change.

The floor was opened for discussion. Representative Tuck stated it is his understanding it is ok to accept an endorsement but it is not ok to accept a contribution. However, in accepting an endorsement, if someone happens to send a check, but the check is not cashed, are you still in the clear for the endorsement? Mr. Wayne suggested the legislator make a record of the check and when it was sent back. Mr. Dauphinais, Executive Director APOC, informed the committee if a check is received, it must be recorded first, sent back and then recorded again on the

legislator's campaign expense report; both as a contribution and an expenditure. The expenditure being when you send it back to the person who gave it to you. Senator Stevens asked if the check had to be deposited before sending it back. Mr. Dauphinais replied the check does not have to cashed or deposited before sending it back.

Senator Coghill said it appeared the pledge becomes the trigger point. Mr. Wayne replied, yes. A legislator may make a pledge in exchange for an endorsement but not for a contribution. Senator Coghill asked Mr. Wayne to explain the parameters for making a pledge. Mr. Wayne responded there is no definition. Each situation would be determined on a case-by-case basis. Mr. Wayne directed members to the last sentence on page 5, "In determining whether or not these violations of the act have occurred in a particular instance, the committee will first determine whether the member made the pledge with an understanding that the contribution or a donation would be made in exchange for it". The pledge had to have that piece connected to it in order to be a violation. For example, if a legislator signed a pledge and did not receive a contribution, but there was an understanding that one may be forthcoming, the legislator would be in violation. If a complaint were filed, the committee would have to determine what legal standard would apply, how to weigh the evidence and determine whether or not the subject of the complaint should be accountable for having an understanding there was a "quid pro quo" pledge in exchange for a contribution or not.

Representative Tuck said not all candidates receive a contribution after making a pledge. Could it be argued a person did not know there was going to be an endorsement involved with the pledge; and, if so, could the person go ahead and cash the check or would it be required to return it? Mr. Wayne replied the opinion states if it was the person understands they were going to receive contributions for a pledge, the person would be in violation if they made the pledge. Various members weighed in on the hypothetical question. Mr. Wayne referred members to the language in 24.60.030(e)(1). In the end, it comes down to the understanding the person is going to receive money or is soliciting a contribution by making a pledge. If a complaint were filed, the committee would look at these factors in addition to past practices of the organization, the language of the pledge, or the pledge form. Mr. Wayne also pointed out that even if the pledge form says something like -- If you sign this pledge, we'll send you $50-- and the person signs it but doesn't receive the $50, there is the expectation of a contribution. Rep Tuck suggested in addition to the opinion as drafted the committee should make a recommendation a person should not receive a contribution any time they sign a pledge. He did not believe the understanding or lack thereof, nullifies the consequences. There are consequences whenever a person accepts a contribution based on a pledge and because that is not clear in the opinion, he recommended adding it. Mr. Wayne pointed out to the committee there is more than one kind of pledge. It does not have to be on a form. It can be in the form of a statement in front of an audience who can make contributions later as a result of the pledge. Senator Coghill said the difference between the role of being an

advocate and making a pledge can be very difficult to discern. Mr. Wayne stated there will be circumstances where a pledge could be considered over the line and other times it may fall in a gray area. He agreed adding a recommendation to the opinion was probably a good idea, but it should be one not be binding on anybody.

Senator Stevens was concerned that endorsements can be very valuable—more so than contributions. How can we say that "endorsements" is not a 'thing of value'? Rep Johnson responded it is excluded in statute and therefore would require a statutory change. He would be willing to co-sponsor this change with Senator Stevens. Senator Stevens indicated that if anyone ever posed the question to him, he would recommend the person never fill out any questionnaires as the person may find themselves later on voting against that issue as a legislator. Rep Johnson agreed with Sen Stevens' comment and noted that a lot of people do fill them out. Rep Johnson pointed out his concern is only for sitting legislators. He supports the opinion and agrees an endorsement can pull a lot of weight. In one instance, he knew of an endorsement that was valued at $30,000.

Vice Chair Turner asked if there was anyone from the public who would like to comment. John Alcontra introduced himself as a government relations director for 13,000 members of NEA Alaska. He stated NEA Alaska has already distributed their legislative candidate questionnaire and about 75% have been returned by candidates for the State Legislature. He stated a committee, which has 61 members elected by 13,000 members, conducts meetings that run between 7 ½ and 11 hours on a Saturday. They painstakingly wordsmith the questionnaire which has about 20 questions. The process consists of so much time and effort with details spent on one document that it would put some of the legislative processes in Juneau to shame. In the questionnaire, there are questions that ask if the person supports pre K-12 funding, for example. He did not believe it was the understanding of those who complete the questionnaire that they thought it was the one piece, i.e. education, which would determine whether or not they would get an endorsement or contribution from NEA Alaska Political Action Committee. It is not. Many factors go into determining who receives an endorsement or a contribution. For incumbent legislators, their voting scorecard and legislation are also considered. The decision has a lot of different variables. For challengers, the questionnaire is one way to obtain some of their thoughts and processes on record whereas an incumbent legislator already has the advantage or disadvantage of having a track record. For example, the current senator from District I has views that are in direct opposition to most NEA Alaska members. However, he still fills out the questionnaire not because the senator is thinking someday they will endorse him, or that they might contribute to his campaign. The variables that come into play can be a working relationship with the legislator, or the extreme likelihood of success that he'll change his position. There could be a chance for the senator in District I the committee decides to endorse the senator and give him a campaign contribution and it has 0% to do with his answers on the questionnaire or even his track record as a lawmaker. In closing, Mr. Alcontra

stated there is no correlation between filling out a questionnaire and receiving an endorsement by NEA Alaska.

Rep Tuck recommended two additional amendments to Rep Johnson's motion. One, that the committee does not recommend receiving any contributions after making a pledge; and two, that the words "written or verbal" be added as types of pledges being referenced.

Rep Johnson agreed to adding the word "written" but not "verbal". Mr. Wayne was asked to weigh in on the second recommendation made by Rep Tuck. Mr. Wayne stated 24.60.030(e)(1) does not say "written". A pledge could be a statement or threat. What separates the two is whether or not there was an "understanding".

Rep Tuck withdrew his second amendment and restated his first amendment, "that a sitting legislator does not accept a contribution based on a pledge". Vice Chair asked members if they accepted Rep Tuck's friendly amendment. Senator Stevens interjected. He did not consider Rep Tuck's amendment to be a friendly amendment but a real amendment and suggested members vote on the amendment before voting on the main motion. Friendly was removed from Rep Tuck's amendment.

A roll call vote was taken: YEAS: Rep Johnson, Rep Tuck, Skip Cook, Toni Mallott, Conner Thomas, Gary Turner. NAYS: Sen Stevens, Sen Coghill. Motion passes.

Senator Stevens asked for clarification of Rep Tuck's amendment. Rep Tuck clarified that his amendment was "it is the committee's recommendation that you do not accept a contribution after having made a pledge".

Vice Chair Turner asked for a roll call vote on Rep Johnson's motion to approve the advisory opinion as amended by Mr. Wayne and Ms. Anderson. A roll call vote was taken: YEAS: Sen Coghill, Rep Johnson, Rep Tuck, Skip Cook, Toni Mallott, Conner Thomas, Gary Turner. NAYS: Sen Stevens. Motion passes.

Vice Chair Turner asked Mr. Wayne where Rep Tuck's amendment should be inserted in the advisory opinion.

Mr. Wayne saw two possibilities. It could be inserted at the end of the long footnote at the bottom of page 2. The footnote states what the committee does not decide, and it basically gives two points of view that the courts have weighed in on regarding unconstitutionality. In one sentence it states, "The role that elected officials play in our society makes it all the more imperative that they be allowed to freely express themselves in matters of current, public court. Debate on the qualification of candidates is at the core of our electoral process, etc." The court strongly feels a component of the electoral process is to find out what candidates

think and what they believe and try to size them up. It's helpful to the public to have tools to do that. On the other hand, legislatures can limit that involvement. They can protect the electoral process from quid pro quo corruption, which is what we are talking about here - trading one thing for another when there's an agreement. Mr. Wayne suggested making a new paragraph after the word "interest" in the last sentence, starting off with **"Taking into account these points and the difficulty in sometimes having the uncertainty in knowing whether or not a quid quo pro exists, the committee recommends that out of caution the candidate consider not accepting a contribution**…..because of a pledge, or something to that effect. He welcomed the committee with providing him specific language unless they preferred he craft something. He would keep in mind the amendment provided by Rep Tuck would state the committee is not prohibiting, but advising in order to keep the legislator out of trouble.

Member Cook pointed out the opinion comes close to stating that very recommendation on page 5, the last sentence just before the conclusion. Member Cook suggested inserting Rep Tuck's amendment. Member Thomas suggested adding some language to the effect, "in order to avoid questions or the appearance of impropriety, the committee recommends…" Rep Tuck recommended adding it on page 6 after the last sentence which talks about the pledge with an understanding the contribution or a donation would be made in exchange for it. Mr. Wayne preferred inserting it in the first suggestion where Member Cook had suggested. Members agreed.

Ms. Anderson informed the committee today's advisory opinion and the opinion issued on June 14 will be published after changes are made to the one today. The opinions would be posted in the July edition newsletter. Ms. Anderson will provide Mr. Dauphinais a copy of the advisory opinions as well for distribution to APOC staff.

5. **ADJOURN:** Representative Johnson made a motion to adjourn the meeting at 2:06 p.m. Motion approved.