

Alaska State Legislature

Select Committee on Legislative Ethics

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MINUTES from September 27, 2011 FULL COMMITTEE MEETING Anchorage LIO, Room #550

- 1. CALL THE MEETING TO ORDER:** Chair Dennis “Skip” Cook called the meeting to order at 9:00 a.m. Members present: Representative Chris Tuck, Representative Carl Gatto, Senator John Coghill, Senator Gary Stevens, Toni Mallott, H. Conner Thomas, Gary Turner, Herman G. Walker, Jr., Staff present: Joyce Anderson, Administrator.
Teleconference: Dan Wayne, Legislative Legal, Brenda “Joan” Mize, APOC, Pat Forgey, ADN
- 2. APPROVAL OF AGENDA:** Chair Cook requested a change to the agenda: ITEM 7. INTERNSHIP APPROVAL-REACH, Inc., be heard at 10:00 a.m. and the Senate Subcommittee ITEM 3a. Use of the Capitol Annex, in the Tom Stewart Building, for a small wedding in November, be moved to the Full Committee meeting agenda as the last item. Member Turner moved to approve the agenda as amended. There were no objections. Motion passes.
- 3. APPROVAL OF MINUTES:** Chair Cook asked if there were any corrections to minutes of the July 12, 2011 Full Committee meeting. A motion to approve Full Committee Meeting minutes was made by Member Thomas. There were no objections and minutes were approved.

Chair Cook requested a motion to approve minutes of House Subcommittee Meeting held on July 12, 2011.

Representative Gatto requested members return to Full Committee Meeting minutes for clarification. He referred members to Page 9 of 17, second paragraph, which states as follows:

“Representative Johnson was invited to the floor by Chair Cook. Representative Johnson stated he would be providing a different perspective. His knowledge was not consistent with the facts.”

Representative Gatto asked if the sentence, **“His knowledge was not consistent with the facts”**, was an observation or a conclusion and if it belonged in the minutes. He stated it sounded to him as someone’s conclusion. Chair Cook referred the question to Ethics Administrator Joyce Anderson. Ms. Anderson responded that Rep Johnson began his testimony with those statements. Chair Cook suggested rewording the minutes by inserting the words, **“Rep Johnson said that his knowledge...”**, and inserting, **“...with the facts, as presented.”** Rep Gatto replied the minutes sounded to him that it was not said by Rep Johnson but that someone who wrote it made a judgment call, rather than simply an observation. Chair Cook commented that he thought it was a quote without quote marks. Representative Johnson suggested joining the two sentences, inserting, **“and that his knowledge...”** Representative Gatto replied that if Rep Johnson did say that, then inserting **“and that”** and **as presented”** would help clarify enormously. There were no objections to Rep Gatto’s motion. Motion passes and minutes were approved, with amendments.

The members returned to the minutes of the House Subcommittee Meeting on July 12, 2011. Member Turner moved to approve. There were no objections and minutes were approved.

Motion to approve minutes of the Senate Subcommittee Meeting held on July 12, 2011, was made by Senator Coghill. There were no objections and minutes were approved.

4. PUBLIC COMMENT: None.

5. CHAIR/STAFF REPORT:

- a. Update – New Employee Interim Training** - Ms. Anderson referred members to their packets. New employees are notified of the 30 day requirement to complete training and how they can complete it online. Reminder notifications to those who do not complete the required training are sent as needed. To date, 41 staff has completed training on-line. Six employees are in the process of completing the training.

- b. Ethics Disclosures** - Ms. Anderson referred members to a report of late disclosures and number of disclosures filed between July and September, 2011. Ms. Anderson noted that of the 128 disclosures filed, 116 of them were “Gifts of Travel and/or Hospitality” disclosures. Ms. Anderson also noted there were 5 late disclosures since the last committee meeting – Rep Gatto, 2nd late disclosure; Sen Hoffman, 3rd and 4th late disclosure; Rep Austerman, first late disclosure; and Rep Foster, first late disclosure. All of which were “Gifts of Travel and/or Hospitality.” The money from the

finer goes to the Legislative Affairs Agency and is put in the general treasury.

Representative Gatto pointed out his name was on the top of the list. He stated he should get a reward for not having filed a late disclosure in five years. He continued to state that "we" never discussed the circumstances surrounding his late disclosure, and yet there were circumstances so unique and so overwhelming that to be a day late "we" should have some ability to consider overlooking the fact it was late. He stated he was insulted that mitigating factors were not considered and "we" just want to follow rules. Rep Gatto stated he understood it was a violation to be a day late, but his staff files his disclosures for him, and so does everyone else's staff. Ms. Karen Sawyer, his chief of staff, was in Minnesota with her dying mother and she'd been there for a long time. Upon Ms. Sawyer's return to the office, she filed the disclosure. He stated he did not know how much it cost to collect this twelve dollars but it was probably a whole lot more than twelve dollars considering the cost of processing, depositing it, and manpower here and there. He stated he knows it is his fault if this happens, but the time Ms. Anderson has to invest and time he has to invest to look at this and time his staff has to apologize for what happened seems out of character for an organization that we are members of.

Member Walker stated the statute allows a five day grace period, asking Ms. Anderson if this was correct. Ms. Anderson replied "yes" the committee allows for a five-day grace period. Member Walker continued, stating that Ms. Anderson does not have the authority *not* to fine the person. Ms. Anderson responded that was correct and added the committee does not have a list of mitigating factors. Member Walker asked if the only remedy is for the statute to be changed. Ms. Anderson responded there could be a statute change or the committee could adopt a list of mitigating factors. Ms. Anderson added that APOC has mitigating factors. Member Walker emphasized that Rep Gatto should be addressing this issue to the committee, rather than directing the discussion specifically toward Ms. Anderson, who is simply doing her job. Member Walker agreed with Rep Gatto that there were mitigating circumstances surrounding his late disclosure and perhaps a procedure needs to be in place.

Chair Cook asked if a reason was given for the late filing when the disclosure was filed, and/or was there a request to waive the fine. Chair Cook added that he did not feel it was the administrator's job to chase down the reason why a disclosure was filed late. However, if the disclosure was filed with a reason explaining why it was late, and it was due to circumstances such as described here, Ms. Anderson could have brought it to the committee for discussion or there could have been a request when the fine was received other than bringing it up at today's meeting.

Representative Gatto responded to Chair Cook stating that when Ms. Sawyer returned from Minnesota, she had a desk full of stuff to do and this was one of them. Chair Cook asked Rep Gatto if Ms. Anderson said to him that she didn't care if his staffer was busy. Rep Gatto stated he did not know but it sounded that way. Chair Cook stated he did not believe Ms. Anderson knew of the circumstances and Rep Gatto stated that was the problem--Ms. Anderson does not get involved enough in things like this, but he felt she should. Chair Cook stated it's up to the person to tell her there is a problem. Rep Gatto stated he did not know if someone told her. Chair Cook asked Rep. Gatto when he became aware of the fine. Rep Gatto stated he found out when he received the letter, which was dated September 7, 2011. Chair Cook asked Rep Gatto if he contacted Ms. Anderson and explained why the disclosure was filed late and asked her to waive it. Rep Gatto stated it was already written, and very conclusive. The letter says, "Thank you for your cooperation in this matter. You have 30 days to send the money." It does not say, "If you have an issue that might add information...."

Member Walker concurred and further stated it is unfair to bring it up now before the committee today, and place blame on the administrator, when the committee has no knowledge of the circumstances.

Representative Gatto asked if Member Walker was saying that this is the wrong time to address this. Member Walker did not necessarily agree this was the wrong time. He indicated the subject matter had merit, but the procedure followed by Ms. Anderson was what was in statute. What needs to happen now is to figure out a remedy to prevent this from happening in the future.

Senator Stevens stated he was having difficulty hearing testimony, and hoped he was not repeating what might have already been said. He stated filing travel disclosures has been an issue for some time and he thinks the problem is the 30-day timeframe versus 60 days to file for everything else, which is in Sen Coghill's bill. The problem he has experienced often times is organizations that cover travel will be late in providing travel costs. He thinks the remedy is to pass legislation to change the 30 days to 60 days. He believes it is an unfair burden on staff to file disclosures in 30 days.

Member Turner stated he agreed with Member Walker that Rep Gatto brings up an important issue that the committee should look into further. However, even if Ms. Anderson were aware of the mitigating circumstances, the statute does not give her authority to take it into consideration. Ms. Anderson is bound by statute to send out letters. Member Turner added he felt changing the 30 day deadline to 60 days might be the solution.

Representative Gatto stated that he felt that the \$12 fine was bad economics and bad public relations. He reiterated that considering mitigating factors was the answer versus changing the 30 day deadline to 60 days, noting that what if Ms. Sawyer was gone for 65 days. He also pointed out there is no way to “clean the slate” if you haven’t filed a late disclosure in five years. It does not seem to matter if you have been filing timely several years in the past. What seems to matter is that you filed another late disclosure and are punished each time you are late.

Chair Cook reminded the committee members this is a statute made by the legislators, not by the committee members. He recommended talking to fellow legislators about adding mitigating factors or forgiving fines after a certain number of years.

Member Thomas stated the statute does have a provision to take into account “circumstances”. It states, “If the committee finds a late filing was inadvertent, the maximum fine the committee may impose under the subsection is twenty five dollars”. Representative Gatto’s fine was \$12. Representative Gatto responded that twenty five was the maximum but it did not have to be that; it could be five, ten, fifteen, twenty, twenty-five or zero. Member Thomas reiterated that Rep Gatto’s fine was \$12 and this was his second violation. Member Thomas stated he felt it was inappropriate for Rep Gatto to be using his time and position on the committee to be arguing this particular issue now. Representative Gatto questioned Member Thomas’ last statement. Member Thomas restated his previous comment and added it seems to be about the \$12.

Representative Gatto stated it wasn’t about the amount of the fine, but the fact Ms. Anderson and this committee had to spend time on this issue and the state has to process the paperwork and check. It is so inefficient when there is a mitigating circumstance and the letter does not allow him the option of calling before the meeting.

Member Thomas and Chair Cook asked Rep Gatto if he filed anything else that would make Ms. Anderson aware of the circumstances. He replied no. Member Thomas interjected asking Rep Gatto if someone on his behalf did. Representative Gatto stated he did not know but if she were in this meeting he would ask her. Chair Cook believed Ms. Anderson had not been made aware of the problem until this morning. Ms. Anderson stated she did know of Ms. Sawyer’s circumstances; however, she did not know that it was related to this disclosure. She was not told that was why the disclosure was late. Ms. Anderson stated she did not connect the two. Senator Coghill commented he, too, was in favor of implementing mitigating circumstances. He added it was nice to have staff, but it is “our” responsibility, and if there are mitigating circumstances with your office, it really is “our” part to make that case. Accepting responsibility is part of our job. Sen Coghill suggested writing up a list of suggested

mitigating factors and forwarding it to legislators who will be dealing with it, both in the House and Senate. He stated he believed Rep Gatto had a good point, but at this time, the best thing to do now is accept the responsibility and move on.

Chair Cook stated, "Late or not", the committee has found there may have been inadvertent circumstances, and the statute allows the committee to impose no fine or any fine up to \$25. Member Walker moved based upon the circumstances Rep Gatto presented here today that--his staff member, who was out of the office burying her mother, is the reason for filing the disclosure late--the committee waive the \$12 fine. Chair Cook asked if there were any objections.

Member Turner asked if Ms. Sawyer could have filed the disclosure before leaving for Minnesota. Rep Gatto stated she was gone for a long time and returned for only a day and left the following day. Member Turner asked if there were any other staff who could have filed the disclosure. Rep Gatto responded he could have filed it himself, but he wasn't aware it needed to be filed. He received a check yesterday reimbursing him for the trip. He stated he did not know the travel cost but probably could have calculated it. Rep Gatto added it can take a long time to receive reimbursement.

Chair Cook asked if there was any further discussion. Member Thomas stated he was against the motion as there was some responsibility on either Rep Gatto or his office to have submitted some explanation as to what happened before showing up today at noon with this issue. Member Thomas stated he did not feel this was the proper way to resolve this issue nor was it a matter of \$12. It was about filing the disclosure on time and not that it cost more to process than the \$12. Arguing about it here today instead of discussing an item listed on the agenda was inappropriate. Chair Cook asked if Member Thomas was moving to table the motion or have a vote. Member Thomas replied have a vote. Representative Tuck asked for clarification on how many employees Rep Gatto had on staff and Rep Gatto responded he had two.

Ms. Anderson took a roll call vote: YEAS: Rep Tuck, Sen Coghill; Sen Stevens, Herman Walker; NAYS: Toni Mallott, Connor Thomas, Gary Turner, Skip Cook. Motion fails.

c. Outreach--Visiting Legislative Offices during the interim --

Ms. Anderson reported on July 26, 2011, she and Member Herman Walker, Jr., held an informal, Interim Ethics Session, at the Anchorage LIO for legislators and legislative staff. The discussion focused on redistricting issues and was open to questions on any subject. Another session was held at the Fairbanks LIO on August 23, 2011. She and Chair Cook answered questions from legislators and staff.

Questions focused on fundraising, what a legislator can or cannot do walking their new district boundaries, legislative newsletters, post office box addresses in rural areas and how to determine what district the occupant lives in, and contract carriers which services HC routes (this subject will require more research). A handout with helpful hints for newsletters and previous advice given on newsletters was provided. Another hot topic discussed was when do the new district boundaries go into effect in relation to the use of state resources; i.e., when legislators are sworn in in 2013 or when the 2012 November election results are certified? Ms. Anderson stated the question should come before the committee. According to Curtis Clothier, Information Services, new legislators do not have e-mail addresses until they are sworn in, which has created issues, according to staff. Legislators are usually contacted by constituents in the new district boundaries well before the legislator is sworn in. Ms. Anderson suggested "leadership" should also be informed of this question.

Member Turner stated his concern is the constituent being without representation until the new legislator is sworn in, which would be approximately two and a half months after the November election. He wondered why I/S would not issue email addresses right after the election or when the election is certified.

Rep Tuck stated prior to being sworn in you cannot have a fax number or a phone number. He stated he will be starting up his "morning coffees" in October which allows constituents to meet with him and discuss what is going on in their neighborhoods, and for him to listen to ideas before going into session. Rep Tuck stated he agreed with Member Turner that during the transition period the new legislator needs to be able to conduct "outreach". Whether the resources used come from the state is another question. He stated he hoped the POET account could be used to send out a mailing and pay for costs associated with a constituent meeting prior to going to Juneau.

Chair Cook asked when the POET account becomes available to new legislators and are funds considered campaign funds until the new legislator is sworn in? Senator Coghill stated the legislator has up until session to use campaign funds. He usually closes out his campaign account at the end of December. He also stated when he was last elected he used campaign funds to travel to pre-session meetings before he was sworn in. He recollected verifying with APOC this was acceptable.

Rep Gatto stated when constituents contact him, regardless of whether they live in his district or not he represents them, everything he does is statewide. Therefore people in the entire state are his constituents. He would respond to anyone who contacts him. There should not be a mail restriction and a legislator should be able to write to anyone. Rep Tuck

responded to Rep Gatto's comment pointing out there is a difference when a constituent contacts you versus when you contact a constituent. He stated he agreed that he, too, would respond to anyone who makes contact with him who was not in his district. But the matter of concern presently is about when a legislator can reach out to his/her constituents. Member Cook noted it is difficult because "constituent" is not defined in statute.

Member Walker asked for an update on redistricting. Senator Coghill stated the plan is being appealed in the courts. The Redistricting Board has to address three challenges to their plan. He stated the courts will probably make the final determination and it is expected the decision will be well in advance to the candidate filing deadline of June 1, 2012. He stated once you are elected by the people, you should be able to do any outreach upon certification. Although he believes he was sworn in before he received certification.

Chair Cook stated if a special session was called after the November election the sitting legislature would be the one that was convened. After the election, he would think communications with those who have elected the legislator could begin. However, he questioned whether or not it is up to the Ethics Committee to make this determination.

Member Thomas stated there is an opinion from APOC in today's packet that seems to say no. Rep Gruenberg asked about using the POET account this year and next year to send legislative newsletters to constituents in the legislator's new district boundaries. APOC said no. Senator Coghill agreed this is the dilemma – how can legislators communicate with constituents who will be living in the new district but they haven't yet chosen you as their representative. Chair Cook stated he was only referring to the ability to communicate, not who pays for it.

Chair Cook further stated if you are an existing legislator who has a different district than the one before, maybe using campaign funds is the clearest, safest solution, rather than using funds from a previous POET account which are dedicated to legislative uses for the sitting legislator. Senator Stevens stated it was an inappropriate use of campaign funds because people give you campaign money to use to run for office, not for constituent outreach work. The public does not understand there is a funding issue for a new legislator who is in transition.

Chair Cook suggested the legislature discuss what funds a new legislator should use when they technically do not have access to state resources. Chair Cook asked if legislators could be sworn in a week after the election results are certified thus making it real to what the public believes is the situation. He further asked why everything is in limbo for that time period. Several members stated it was in the constitution, not in statute. Member Turner asked Mr. Wayne if a legal opinion on this existed.

Mr. Wayne stated the “election in terms” is in Article 2, Section 3, of the Alaska Constitution and reads: **“Legislators shall be elected at general elections. Their terms begin on the fourth Monday in January, following election, unless otherwise provided by law”**. The editor’s note in the Constitution booklet reads, **“The terms of legislators begins on the second Monday in January, following a presidential election year; and on the third Tuesday in January, following a gubernatorial election year (AS 24.05.080)”**

Representative Tuck asked if APOC restricts legislators from using campaign funds to do “outreach” after the election is over. Chair Cook suggested he ask APOC for an advisory opinion.

- d. Redistricting and the Use of State Resources – combined with discussion of Item 5c.

MEMBERS MOVED TO AGENDA ITEM 7.

- e. **Recap of Meetings with APOC** – Ms. Anderson referred the members to the handout in the packet. Ms. Anderson reported the interaction between APOC and Ethics has been positive and beneficial. There are two advisory opinions issued by APOC and one complaint decision that all intersect with Ethics – in the packet of materials. Representative Gruenberg had asked if the POET Account could be used to correspond with residents in the new legislative districts. APOC responded no, stating the POET account may be used “only for expenses associated with the candidates serving as a member of the legislature”. AO 11-10-CD

Ms. Anderson briefly explained APOC’s advisory opinion prepared for Rep Lynn (soliciting campaign contributions from residents in the new legislative district), and APOC’s decision prepared for Lobbyist Raymond Gillespie (donating charitable event tickets to legislators and legislative employees). AO 11-11-CD and Decision 11-10-LOB

- f. **Informal Advice Staff Report** – Included in the packet is the report from August 1-31, 2011. Members agreed they would like to continue receiving staff reports on a monthly basis. There were no questions.
- g. **NCSL Ethics Center–new website** - Ms. Anderson stated NCSL launched a new web site this month highlighting ethics statutes and procedures for all states. This office answered survey questions and provided clarification on several points after the draft survey was released. Ms. Anderson stated the website contains valuable reports with information from state to state. The link is:
<http://www.ncsl.org/Default.aspx?TabID=746&tabs=1116,84,212#212>

- h. COGEL Conference – December 2011** – Ms. Anderson stated the conference will be held in Nashville, Tennessee. The agenda and registration forms are included in the packet. Any ethics committee members attending would register as “members” of COGEL and receive the membership discount. Rep Gatto, Chair Cook, Member Walker and Ms. Anderson expressed an interest in attending.

6. BUDGET:

- a. FY11 Budget:** Ms. Anderson reported FY11 is closed. A balance of \$28,187 will be placed back in the general fund. The majority of the balance is from unused money allocated for outside legal services and a public hearing, should one be needed.
- b. FY12 Budget:** Ms. Anderson stated the report figures are as of September 15, 2011. Budgeted total was \$238,300; expended \$42,184. Member Turner stated last year, the committee budgeted a little over \$46,000 for services, but this year, the committee budgeted \$39,800; with just 3 months into the new fiscal year, the committee has spent \$7,000 less than in all of last year for services, and asked if this amount seemed high. It appears the committee has already spent \$12,000 in services in just 3 months. Ms. Anderson replied the numbers she received were from accounting and she agreed they do not seem accurate. She will follow up with an email to committee members.

MEMBERS TOOK A 15 MINUTE BREAK AT 10:35AM

MOVE TO AGENDA ITEM 8.

- 7. INTERNSHIP APPROVAL-REACH, Inc., Supported Employment- Requested by Rep Muñoz:** Representative Muñoz, Ms. Robyn Marriott and Ms. Nicki Franzoni joined the meeting via teleconference. Ms. Anderson stated the committee received a request to approve an internship with Reach, Inc., which is an organization that serves children, adults and families experiencing developmental delays or disabilities in Southeast Alaska. This request is not a typical request, such as from a university. Chair Cook stated the difference in this internship is the educational component.

Rep Muñoz thanked the members for considering this request. She was presented with a request in August of 2011 by representatives of REACH to see if it was feasible to make available job opportunities for individuals in Juneau who have physical disabilities. The position would be for a limited time to come into the office and assist with day-to-day duties, such as, filing, light cleaning, and answering phones. She stated this would be a wonderful opportunity to encourage individuals to step forward and feel the empowerment of being involved in the legislative process. Rep Muñoz turned it over to Robyn Marriott, Program Developer for Supported Employment for REACH, and Nicki Franzoni, Manager of Supported Employment for REACH.

Ms. Franzoni thanked the members for their time and explained what REACH is about, stating they work with employers in employing approximately 50 people with disabilities in the community. These individuals gain work experience, confidence in their ability and skills while working in a temporary, 4-6 week period.

Member Walker commented he was familiar with the program. He believed the program was an excellent opportunity to get individuals involved in the political arena and thanked Ms. Franzoni and Ms. Marriott.

Ms. Marriott stated they have partnerships with the Department of Vocational Rehabilitation who also supports the cost of a trained job coach working side-by-side with clients. The job coach helps the clients understand what the employer's needs are and teaches them how to communicate concerns with the employer, ensuring both parties are happy with the outcome. The required training would likely be completed by the job coach, as the client may not understand the requirements.

Chair Cook asked if the Ms. Anderson were to modify training for both the job coach and the individuals, would they be receptive to it, and Ms. Marriott answered yes, as often times individuals are required to attain certificates for various reasons. Ms. Marriott and Ms. Franzoni answered and clarified questions from members, stating the interns work for legislators who want their help and perform duties as requested by the legislator.

Member Thomas motioned to approve the internship program with the provision the intern and job coach both complete a modified Ethics training component. There were no objections. Motion passes.

MEMBERS MOVED TO AGENDA ITEM 5e.

AT 11:03AM – MEMBERS MOVED TO AGENDA ITEM 8.

- 8. ADVISORY OPINION 11-03 Request:** Ms. Anderson presented a brief summary of an advisory opinion request made by Richard Benavides, legislative aid for Senator Davis. Mr. Benavides requested the committee revisit the current prohibition on including the name and contact information of clinics/doctors providing Medicare services, in a legislative newsletter.

Mr. Benavides introduced himself then provided some background information stating Senator Davis is known to be an advocate of health and education issues. Her office receives calls from people who live outside of her district because they know Sen Davis will go the extra mile when it comes to either health or education. He stated he has made an attempt to ascertain whether or not there is a possibility of listing all of the providers for Medicare in the state. The State Department of Health has a listing that contains a little over a thousand addresses and names of doctors with a private office and their office at a hospital.

The names on the list are not necessarily Medicare providers, but may have accepted a portion of Medicare in the past and have had to send paperwork to the federal government for reimbursement. The fact they are listed with CMS (Centers for Medicare/Medicaid), does not mean they actually serve patients with Medicare. In his research, he called just about 60 offices who stated their Medicare patients were current patients who were turning age 65 and they did not feel morally right in turning them away. His research revealed many doctors who stated they would not be accepting new Medicare patients. People call and email Senator Davis' office asking where do they go or what can they do. Mr. Benavides stated he ran across a couple of articles containing names of places specifically open for Medicare patients, and stated that if he had a list of names of Medicare providers he could refer these callers to the list and/or add the list to their newsletter.

Chair Cook asked Mr. Wayne to go over the draft advisory opinion. Mr. Wayne stated the question answered by the draft is as follows:

“Does the legislative Ethics Act permit a legislator or legislative employee to list, in a legislative newsletter, the names of health care providers that specialize in serving patients insured by Medicare?”

Mr. Wayne referred members to the footnote defining, “providers who specialize” to mean “participating providers of Medicare insured services”. He pointed out there are three types of Medicare providers; “participating, nonparticipating and those who opt out.” He explained what each of them meant – also noted in the footnotes.

Mr. Wayne referenced on page, AS 34.60.030(a)(2), which prohibits a legislator or legislative employee from using public funds, facilities, equipment, etc., for the private benefit of either the legislator, legislative employee, or another person. There is an exception for newsletters in subsection (J). He noted the issue of “freedom of expression”, and “providing a benefit”, is mentioned on page 4.

On page 5, the opinion states, “The matter you present does not involve charitable donations by businesses”, which is different from AO 11-02 recently issued by the committee. He points out just because an organization is a non-profit, it doesn't mean there's some automatic “pass” in relationship to 24.60.030(a)(2). Not all non-profits are the same; some have financial benefits. Page 6 clearly states the stronger the link between the benefit and the resources used to award the benefit the more likely the prohibition may apply.

In conclusion, Mr. Wayne states in this instance, the Legislative Act permits a legislator or legislative employee to list in a legislative newsletter (one paid for with legislative resources) the names of participating providers of Medicare services as long as the newsletter makes clear the list is quoted from material published by DHSS as part of the department's effort to help patients locate participating providers of Medicare services and is not an endorsement of commercial services. The perception the list may be an endorsement of products

and services is lessened (see page 7) because the list is being published with clear attribution to the department, which is more than a mere disclaimer. Members asked Mr. Wayne questions. Mr. Wayne responded it would be acceptable to provide a website link in the newsletter that directs one to the Department of Health and Social Services' list of Medicare providers; however, the fact of the matter is many elderly people do not have computer access and this would not be as beneficial to people over the age of 65 as would providing a list in a legislative newsletter containing a name and number of a provider. This scenario is exactly what Mr. Benavides has experienced. Mr. Wayne reiterated the last sentence on page 7 of the first paragraph which states, "The more closely your listing tracks the department's own language, the less it may appear to be an endorsement by your newsletter."

Rep Gatto asked Mr. Wayne, as a rule of thumb, if the list of providers is already published by another state agency does this factor alone make publishing the list OK? Mr. Wayne stated it was sufficient in this particular case. However, Mr. Wayne pointed out a website to a list of pizza places would not be acceptable simply because it is published in the phone book. He stated that the answer was presented best on the bottom of page 6 and top of page 7 of the draft.

Chair Cook stated there is a factor not mentioned in the draft and although he did not have the total facts, he believed the legislature appropriated several million dollars to build the Anchorage (Alaska) Neighborhood Health Center, one of listed providers. He, therefore, believes receiving Medicare services has become a matter of legislative concern. Chair Cook suggested inserting a footnote that says the legislature appropriated funds to build this clinic.

Member Thomas stated he believes there is a legislative purpose in providing access to a [federal] government program and interprets Mr. Wayne's opinion to say the same. However, he asked if this is what the opinion is saying then why make the opinion as narrowly stated as it is? Mr. Wayne explained the concern was one of the service providers was not a non-profit and in the future other non-profits could be added as well.

Member Thomas stated as long as there is a legislative purpose to the listing, it would not matter if there was a collateral benefit to a private business. It really only mattered if one private provider was listed which could then question the legislative purpose. Mr. Wayne noted "legislative purpose" is not defined in statute. He would look more into this question and get back to the committee.

Member Turner asked if the three providers mentioned were the only three providers in the state. Mr. Benavides stated they were the only providers in the South Central area. Finding a doctor who accepts Medicare is easier once you get outside the urban areas. Mr. Benavides provided comment on Mr. Wayne's statement in reference to listing a web page. He stated the best resource he could provide constituents was from a monthly newspaper called, The Senior Voice. He would love to provide a link to The Senior Voice in a legislative newsletter,

but as Mr. Wayne mentioned earlier, a lot of people over the age of 65 do not use the computer. Further, this newspaper is not available on line to view and you cannot even receive it via an e-mail address. The only way is to request a copy. Mr. Wayne stated he would like to respond to Member Thomas' statement earlier. AS 24.60.030(a)(2) states a legislator or legislative employee may not use public funds, facilities, etc., for a non-legislative purpose for involvement in support of political activity or for the private benefit of either the legislator or legislative employee or another person. He stated as a general rule, if something is for a legislative purpose, it is okay under (a)(2), but he did not believe it applies here because it is only one of the prohibitions under (a)(2).

Rep Tuck asked Mr. Wayne if his conclusion would be different, had the listing not come from a state agency, and could it be assumed that anytime a state agency has a listing, whether private or public, that a legislator could also use it in their newsletter? For example, if the Alaska Housing Finance Corporation had a list of contractors that someone could go to for an energy audit on their home, would that allow legislators to print that information in their newsletter? Mr. Wayne stated he considered including language in the opinion saying as long as the executive branch prints or promotes it, you can print it in a legislative newsletter. But, there could be a risk with using that information since it would almost be impossible to know what kinds of lists they published and if the list violates their own Ethics Act. Legislators would be compounding the ethics violation by reprinting it in their newsletters. He added to the opinion in the conclusion, "...the committee finds that **in this instance**, the Legislative Ethics Act permits..." stating that the inclusion of this information is narrow.

Member Turner stated he preferred the names of the providers not be listed and only the toll free number be made available since it does not help the person to call one of the names on the list if the provider is not in his/her area. He stated the listing was supporting an agency. Member Walker disagreed because the legislature had appropriated funds for one of the providers listed and the other reason was because of personal experience he had helping his mother-in-law locate a provider which took them a year. Member Thomas stated he was in favor of the opinion and he did not want the opinion to require or be based only upon the fact there is a website. He stated there is a legislative purpose for listing the information and likes the opinion.

Chair Cook suggested a change in the second paragraph on page 6. Take out "However, it is" and put in "For this and for other reasons stated below..." and then mention it was already listed in DHSS and the legislature had appropriated funds to provide Medicare services. With this wording, the opinion makes it clear the underlying reason for providing the list is not solely based on the fact DHSS has a list on their website. Member Turner stated he concurred with Chair Cook along with fact the information has a legislative purpose.

Mr. Wayne commented on Chair Cook's suggestion stating any real or perceived ethical impropriety is outweighed by the necessity of helping Medicare patients.

This premise would be used in future Ethics opinions. He stated another way of accomplishing Chair Cook's concern is to add to the conclusion a statement saying we are not limiting this exception to just cases where the executive branch has printed some material. He added it appeared the committee did not want to say in future cases we won't approve the printing of a list in the newsletter when there isn't a corresponding quote somewhere. Mr. Wayne added this opinion does not outright object to the rationale put forward by Mr. Benavides but it does say there are other reasons why we're going to allow it.

Member Walker added we may be setting precedent by applying a balancing act, for example, the fact there's a group of people who need to get this information, therefore it is okay to violate the Ethics Act. Mr. Wayne stated what the committee is doing is establishing a "necessity defense." Anyone can try to convince you by saying, "it violates the Act but it was necessary", or "if it wasn't for this, I would not have done it but I had to do it because this was important". Which means you'll be constantly in this position, saying, well if it's important enough, then its ok.

Rep Tuck reiterated his earlier point about it being more of a burden on the provider than for a constituent. Maybe what we want to do is keep the words, "in this instance", rather than saying a violation was necessary to accommodate our constituents. He suggested adding to the opinion a statement that many providers do not receive sufficient reimbursement for the services they provide and may actually take a loss or even say they are contributing or donating, as far businesses being identified. Mr. Wayne stated that may be true, but there is a chain of benefit involved here to the business and the people that work there.

Senator Coghill agreed to the need, and stated his office gives constituents the phone number and suggested providing a phone number or website, and provided an example about referring a friend personally to an adoption agency but would not put it in a newsletter. It is not an inclusive list, which can be a problem. He suggested directing constituents to an agency or clearing house who can direct them. Member Mallott stated she supported the conclusion; the target audience—the aging Alaskans—and it's a benefit to them.

Mr. Benavides informed members when someone turns 65, whether they like it or not, they will be put into this program. Anchorage has 270,000 people and presently only 3 providers take Medicare. Senator Coghill stated Mr. Benavides presented possibly the strongest point yet. He suggested this point be mentioned in the opinion— Medicare is not an optional program when you turn 65.

Members asked Mr. Wayne to restate their options. He went over the options: 1) add a note, either a footnote or in the body of the opinion, saying Medicare is not an optional program and all 65 and older end up with Medicare sooner or later; 2) add a sentence in the conclusion saying the committee based part of their finding on the availability, in this instance, of a state agency's initiatives; but the committee is not saying they would not consider a similar finding in a case where

there was not a state agency—in other words—an indication in the conclusion that you are not limiting it to cases where the executive branch has put their stamp of approval on it by publishing it on a website; 3) add a footnote strengthening the statement made earlier about the existence of one or more obvious legislative purposes being a factor and specifically mentioning the legislature appropriated funds to help build the Alaska Neighborhood Health Center; and 4) add a line indicating many of the target people are not computer literate.

Member Turner stated he still did not support listing the names, but he supported a toll free number which would reduce the frustration of someone having to call each number to find the provider nearest him/her.

Member Thomas moved to adopt the opinion with the modifications as suggested by Mr. Wayne, but making the third exception a part of the body of the opinion instead of a footnote. Members agreed to circulate the draft after it was revised among the members and Mr. Benavides.

Roll call vote was taken: YEAS: Senator Coghill, Representative Gatto, Toni Mallott, Senator Stevens, Representative Tuck, Connor Thomas, Gary Turner, Herman Walker, Chair Skip Cook. NAYS: None

- 9. LEGAL OPINION:** Ms. Anderson stated this item is a continuation from the July 12, 2011 committee meeting on the Shoot for the Cure Charity Event in which members asked for a legal opinion in order to determine the definition of a “ticket” and how the value of the ticket was determined. The two questions asked were: **1.) Whether or not an entry/participation fee to a charity event donated by a lobbyist or anyone else is a “contribution” to the charity event or considered a “ticket” to participate in the charity event under the provisions of AS 24.60.080(a)(2)(B)? Define “contribution” and “ticket.” AS 24.60.990(a)(2)(C). How is the “fair market value” of a ticket determined, especially when there are teams and each team has a different entry fee? AS 24.60.080(j). 2.) Does a charity event, such as Shoot for the Cure, with a forty minute presentation on an educational issue qualify the event as “obtaining information on a matter of legislative concern” under AS 24.60.080(c)(4)?**

Ms. Anderson circulated a copy of a personal check she received on Friday written by Senator Giessel to “Shoot for the Cure” for her participation in the charity event. Senator Giessel requested a copy be presented to the Ethics Committee and noted for the record.

Chair Cook invited Mr. Wayne to the floor to explain the legal opinion. He stated he was asked to consider multiple items and answered them as a group. Mr. Wayne pointed out key points of the opinion. He quoted from page 2, “The plain language of this provision [reference to AS 24.60.080(a)(2)(B)] supports making a distinction between a ‘contribution’ and ‘ticket.’” He stated the phrases in the statute “a contribution to a charity event from any person at any time, and tickets

to a charity event at any time” indicates two separate items. The short answer to question (2) is “no.” The presentation was incidental to the purpose of the event. Although cystic fibrosis is a matter of legislative concern, the event itself was to raise money, not to obtain information.

He went on to state there is a clear distinction between gifts from lobbyists and gifts from other persons. Stricter limitations are placed on gifts from lobbyists such a pre-approval of tickets to a charity event.

The term “value” was discussed—which was something that was important to Sen Giessel in her comments to the committee. The least expensive five-person ticket price for participation in the Shoot for the Cure was \$1,500. This amount breaks down to \$300 per person. The fair market value of each of the entry fees paid for the legislators in this instance was \$300. Mr. Wayne stated one factor the committee could consider was subtracting out food and beverage which can be accepted from a lobbyist. Some of his theories are covered in footnote 4.

Lastly he stated that AS 24.60.080(g) creates an exception to the gift limitations under AS 24.60.080(a)(1) and (a)(2) for gifts accepted by legislators and legislative employees on behalf a recognizable, non-political charitable organization, regardless of whether or not there is approval. Mr. Wayne concluded his summary of the legal opinion and offered to answer any questions. Chair Cook opened the floor up for questions.

Chair Cook stated the Legal Opinion is for the committee’s use and/or the committee may decide to request an advisory opinion. Ms. Anderson stated that an advisory opinion helps her give advice when asked questions, and can assist staff and legislators on this particular subject. Legal opinions are not posted on the Ethics website while advisory opinions are and can be accessed by everyone. She urged the committee to request an advisory opinion.

Mr. Wayne explained a legal opinion was his advice to the committee based on the facts presented to him. The committee may issue an advisory opinion and adopt, reject, or change anything from the legal opinion.

Senator Coghill commented the legal opinion answered the first question very clearly. Senator Coghill stated if any advisory opinion were issued, it would be important to include questions you should ask before attending a charitable event as a legislator, such as who is the sponsor. Ms. Anderson will compose several questions and forward them to the committee for comment. The list will be published in the next Ethics newsletter. The most important question should be what is the value of the ticket? If the value of the ticket is \$250 or more participation by receipt of a gift of a ticket is prohibited.

Ms. Anderson pointed out Legislative Council has the responsibility in approving charity events and making sure they do not sanction any above the \$250 threshold. Ms. Anderson suggested Ethics receive notification prior to the event

being sanctioned to see if it falls within the parameters. Member Turner and Senator Coghill both stated they would like to know the criteria Legislative Council uses in sanctioning charity events. Ms. Anderson offered to arrange to meet with Legislative Council on Thursday, when the council has their meeting in Anchorage. Senator Coghill suggested a phone call to the council.

10. OTHER BUSINESS:

- a. Use of the Capitol for a wedding** (This was Item 3(a) from Senate Subcommittee meeting agenda) – Ms. Anderson stated Jessie Kiehl, staffer for Senator Egan, asked Ms. Anderson if one of the daughters of Tom Stewart could get married in the Tom Stewart Annex. Ms. Anderson responded no because it was a private use of state resources. Mr. Kiehl brought up the ‘di minimis’ use exception to Ms. Anderson. Ms. Anderson stated ‘di minimis’ use is only applied to legislators and legislative employees. Mr. Kiehl also brought up the fact that the term “another person” was used in AS 24.60.030(a)(2). Ms. Anderson explained state resources cannot be used for/by someone else. Mr. Kiehl brought up the fact other activities occur in the Terry Miller Building, such as tournaments. Ms. Anderson explained the use of the Terry Miller Building is in a different category because the gym can be contracted out for use. Ms. Anderson informed Mr. Kiehl if he disagreed with the advice he had the option of bringing the issue before the committee.

Chair Cook asked if there were times the annex was not open to the public. Ms. Anderson stated, according the building manager, it is open during the week. Representative Gatto asked if the building was open for rent. Ms. Anderson replied no.

Member Thomas asked for clarification of the people involved, other than the fact the people getting married are neither a legislator nor a legislative employee. Ms. Anderson replied that Senator Egan and his staff are involved. Member Thomas asked if Senator Egan was the person interested in obtaining the use of the room on behalf of a friend. Senator Stevens interjected stating he could clarify Member Thomas’ question. He explained the policy in the past has been to allow the chair of a legislative committee whose room would be used for these meetings to make that decision. In this case, the chair is Senator Egan and he approved it—that is why Senator Egan has asked the question.

Chair Cooked asked Sen Stevens if those rooms have been available to be used by anyone not connected with the Legislature. Senator Stevens stated very often the rooms are used for other purposes and it has not been a problem. He stated “we’ve used these committee rooms for numerous events, such as the National Rifle Association has had meetings in the rooms over the years he has been there, the Carrots Group, who grow in Alaska from the Mat-Su, the Safari Club, various student groups, University of Alaska Student Association meets and has an ice cream

social, NCSL and CSG have had meetings there to discuss Toll fellowships, the Bar Association from Juneau has its bar exams there, wild game groups, Catholic Bishops meeting, the Nurses Association and an Anglo Mining Company.” He also stated that there have been legislative purposes and non-legislative purposes related to their use and stated he believed it should remain in the hands of the chair of the committees to make the decision. Member Walker asked if a chair has the ability to allow use of other committee rooms. Senator Stevens responded no, only the committee rooms for which they are responsible.

Member Thomas asked if Senator Egan was involved in the wedding. Senator Stevens stated his recollection from his conversation with Senator Egan the judge was an acquaintance of his and he knows the family. He did not believe Sen Egan was attending the wedding. It was a very small affair with no reception following. He added employees who conduct tours of the Capitol will be there to unlock the doors, etc.

Member Thomas asked Sen Stevens if any legislators or legislative employees would be attending the wedding. Senator Stevens stated he was not aware of any. He added the Annex was named after her father and the building was not being used. There is no negative impact on its use. There’s a lot of artwork inside and tours are encouraged. He stated it was the people’s building, not just the Legislature’s.

Member Thomas stated that under the “exception” clause, state resources are allowed if it is ‘di minimis’ use by a legislator or legislative employee. Member Turner asked Sen Stevens if he thought Sen Egan would allow anyone else, other than the daughter of Tom Stewart, to have a wedding in the Tom Stewart Building. Senator Stevens replied he did not believe so. Chair Cook asked Sen Stevens if the meetings he stated occurred mostly during session. Senator Stevens replied yes. Member Thomas stated if there were a legislative connection, the exception would apply.

Senator Coghill stated if the room is under the control of Sen Egan and he made the request, then it would be under his authority. If an ethical problem became of it, he would bear the result. He stated he did not feel there was a personal benefit.

Member Turner commented anyone else wanting to get married in Juneau would probably have to rent a room for at least \$200. Senator Coghill noted there were public places, such as the city dock that probably would not cost anything. The name connection between dad and daughter seems to determine the personal benefit.

Member Thomas stated he understood the points the members have stated, however, they were bound by the statutory provision—unless it falls under one of the exceptions, which it does not. Unless we are allowing it for

Senator Egan, the statute does not allow limited use of state resources for personal purposes for someone not covered by the Act.

Chair Cook posed the question of whether is it acceptable for the committee chair to allow the use of the rooms for whatever s/he wants. The question before them is broader than just one event. In a sense, the committee chairs are using committee rooms in a way the statute authorizes legislators to use their private offices during sessions for personal use. Does this exception extend to committee rooms, year round?

Senator Coghill and Member Mallott discussed whether or not there has ever been a wedding at the Capitol, outside of the building or inside. Senator Coghill did not recall any over the years.

Senator Stevens moved the committee approve the request. Roll call vote: YEAS: Senator Coghill, Representative Gatto, Toni Mallott, Senator Stevens, Representative Tuck, Connor Thomas, Herman Walker, Chair Skip Cook. NAYS: Gary Turner. Motion passes.

11. ADJOURN: Member Walker made a motion to adjourn the meeting at 12:50 p.m.