

# Alaska State Legislature

## Select Committee on Legislative Ethics

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### MINUTES from May 12, 2008 FULL COMMITTEE MEETING Anchorage LIO, Room 220

**1. Call the Meeting to Order:** The meeting was called to order at 8:40 a.m. by Chair Herman G. Walker, Jr. Members present: Senator Con Bunde, Senator Gary Stevens (joined the meeting at 8:47 a.m.), Representative Bob Roses, Representative Berta Gardner, H. Conner Thomas, Dennis (Skip) Cook, Gary J. Turner and Ann Rabinowitz. Staff present: Joyce Anderson and Dan Wayne, LAA legal.

**2. Approval of Agenda:** Representative Roses made a motion to approve the agenda as presented. Hearing no objection, agenda approved.

**3. Approval of Minutes:** Member Thomas made a motion to approve the Full Committee minutes from December 12, 2007. Hearing no objection, minutes approved. Member Thomas made a motion to approve the Full Committee minutes from January 16, 2008. Hearing no objection, minutes approved. Member Cook made a motion to approve the Senate Subcommittee minutes from January 16, 2008. Hearing no objection, minutes approved. Representative Roses made a motion to approve the House Subcommittee minutes from January 16, 2008. Hearing no objection, minutes approved.

**4. Public Comment:** None.

#### **5. CHAIR/STAFF REPORT:**

**a. Informal Advice Staff Report:** Ms. Anderson reported the staff report was not compiled due to time constraints. She hopes to have one completed within the next two weeks and will forward to committee members for comment.

**b. Update on Mandatory Ethics Training:** Ten training sessions were conducted in January and February: three for legislators, four for support staff and three for staff to legislators. All but two were conducted in person. The two sessions for support staff in various locations throughout the state was conducted via teleconference from the Anchorage LIO.

Two PowerPoint handouts are currently available on the Ethics web site – one focusing on legislators and one for legislative employees. The video of the January 18<sup>th</sup> training

session will soon be available as well. Staff hired after the training sessions were conducted will access the web for training materials and sign a form acknowledging review of the materials.

**c. (i): Disclosures – Electronic Filing:** Ms. Anderson stated the project is moving forward. Projected completion date for Phase One is mid July. A receipt will be sent to each individual acknowledging the disclosure form was received by the Ethics Office. Phase Two is the corresponding program for publication in the Legislative Journal as required by statute. Projected completion date for Phase Two is January 2009. Ms. Anderson will keep the committee informed of progress.

Senator Stevens asked if any disclosures overlap with those required by APOC. Two disclosures overlap: Board and Commissions, and Close Economic Association. Asked how we could work with APOC to coordinate the information. Ms. Anderson suggested a copy of these two disclosures be sent to APOC as well. She will work with the programmer on this addition.

**c. (ii): Disclosures Report:** List of disclosures is available on the Ethics web site. Two late disclosures were received: Representative Lindsey Holmes was fined \$25 for an inadvertent late filing that was 203 days late; and Representative Bob Buch was fined \$25 for an inadvertent late filing that was 199 days late. Three disclosure forms were revised because they did not include the date of the association: Close Economic Association; State Contracts, Leases or Grants; and Representation of a Client before a State Agency.

## **6. BUDGET**

**a. FY08 Budget Update:** As of May 2, 2008, the balance in the Ethics budget is \$35,915 out of a total appropriation of \$174,400. "Travel Costs" exceed the budgeted amount by \$1,405. This was due to the numerous times Ms. Anderson flew to Juneau for committee business and to testify and work on ethics legislation. Representative Roses questioned why Ms. Anderson needed to be in Juneau for testimony on legislation when she could testify by teleconference. Senator Stevens stated it was invaluable for Ms. Anderson to be in Juneau to not only testify but work behind the scenes on legislation and work with legislators. "Commodities" was over budget by \$500 due to the purchase of a lap top computer for the office and other office items. It is anticipated there will be sufficient funds to cover expenses through June 30, 2008. The committee had no questions.

**b. FY09 Budget Request:** The legislature approved the Ethics budget as follows: Casual labor increased from 4.5 months to 6 months; 3% cost of living adjustment beginning July 1<sup>st</sup>; administrator position changed from 90% time to 100% time; administrator position increased from a Range 21 to a Range 22. Ms. Anderson met with the chairs of both the Senate and House Finance Committee and Senate President and the Speaker during session to explain the changes to FY 09 budget.

Chair Walker pointed out the committee had recommended a Range 24. Representative Gardner questioned if the Ethics Committee has the authority to make the administrator position a Range 24. Ms. Varni, Executive Director LAA, (on line for this discussion)

stated the Finance Committees approved a Range 22 and budgeted funds accordingly. She referenced AS 24.10.210, Compensation of Employees of Legislative Agencies, and AS 39.27.011, General State Salary Schedule. The committee has the authority to go to Range 24 but does not have the funds to fund the position. Ms. Varni stated the increase in pay (the step increase) would be the same as a Range 24 but would not have the title of Range 24. The committee had no further questions.

**7. ADVISORY OPINION 07-04 Constituent Services:** Chair Walker stated the committee decided at the January 16 meeting to revisit this opinion based on comments from legislators and staff. Dan Wayne, LAA Legal, was available to answer questions about the draft opinion.

Chair Walker opened the meeting to public testimony. Terry Thurben, Chief Administrative Law Judge, was on line to answer questions if needed regarding contact with an administrative maker. Tim Benintendi, staff to Representative Ralph Samuels, testified. He has been a legislative staffer for 20 years and worked for both the majority and minority in addition to the Senate and House. He submitted a two page letter to the committee dated May 8, 2008 explaining the approach he takes when working a constituent request. Senator Bunde thanked Mr. Benintendi for his very insightful letter. Mr. Benintendi felt ten hours was pretty generous. Only one case which took over a year and a half may have exceeded ten hours. The main theme to keep in mind when performing constituent service is for the process to work for the constituent. He stated, as staff to a legislator, you are there to assure there is a communication line between the agency and constituent. Staff must never cross the line into “advocacy.” Mr. Benintendi looks at constituent service as massaging communication.

Senator Bunde commented that some state employees can be deaf to the constituent but when a legislator’s office calls, the constituent is heard and phone calls are returned. This, however, does not mean the outcome is always favorable to the constituent.

Senator Bunde agreed there is a difference between working with a constituent on an issue versus advocating for the client. Senator Stevens said the ten hour limit is silly. Representative Roses emphasized that service is the issue and not the ten hour limit. Both Senator Stevens and Representative Roses asked where does the time limit begin and end.

Senator Stevens is concerned about staff having to keep a log of the time spent on a constituent issue in order to be in compliance with the opinion. Member Cook pointed out the opinion is before the committee because of a request from a legislative staffer. Where do you draw the line between advocating for the constituent and providing the constituent with information on the process. If this point is made clear in the opinion, the ten hour limit could be removed. Member Cook further pointed out the committee was faced with an extreme case where a staffer represented a constituent before a state agency and spent many hours working on the case. Staff should not enter into ongoing litigation or administrative processes.

Representative Gardner stated the legislative role is to move the process forward, make sure everyone knows what they need to know and to urge the agency to take action while at the same time not advocating for a particular action on behalf of the constituent.

Chair Walker referenced the research done by Representative Kerttula (in the packet) in which no other state has a time limit on the number of hours. Senator Stevens asked what would be the consequences if a legislator or legislative staffer goes over the ten hour limit. Chair Walker indicated a complaint could be filed and the Ethics Committee would make a determination based on the facts presented. Member Thomas mentioned the ten hours was not meant as an absolute but only as a guide. When ten hours was reached, the legislator or legislative staffer would re-evaluate the situation and determine if further work on the constituent issue was needed.

Mary Jackson, staff to Senator Tom Wagoner, testified. She has worked as a legislative staffer for 16 years for various legislators. She is opposed to the ten hour limit and will not keep records and is not sure if other legislative staffers will either. Each section of the state has a different level of services available and this level determines the number of hours working on a constituent issue. Member Walker asked if she has a line where you stop advocating for a constituent. Ms. Jackson responded when a constituent either calls or comes in with a concern, she has the constituent write down the facts as they are known to the constituent. The constituent then becomes responsible for the issue. They do not get involved in court cases and will not ask Legislative Legal for an opinion for the constituent.

No other testimony. Member Turner suggested using some of the language in Mr. Benintendi's letter on page 2 in the advisory opinion as it clarifies the distinction for him. Senator Stevens didn't believe the Ethics Committee should be involved in this issue as it is between a legislator and his/her constituents. Member Thomas and Chair Walker both stated the committee doesn't want to interfere with a legislator's method of working on handling constituent issues but if a complaint is received then it is the committee's duty to address the complaint. The committee is seeking guidance on this issue. The previous opinion was passed by both public members and legislators at the December 12, 2007 committee meeting. Senator Stevens commented he was not at that meeting.

Chair Walker agreed with committee members that the ten hour language in the opinion be removed and language similar to that in Mr. Benintendi's letter on page 2 in the second to the last paragraph be inserted into the opinion.

Senator Bunde made a motion to approve the draft changes as recommended by Chair Walker. Representative Roses suggested the advisory opinion also be specific in what services are appropriate and can be provided and what services should be avoided.

Roll call vote: Senator Stevens, Senator Bunde, Representative Roses, Representative Gardner, and Members Thomas, Turner, Cook, Rabinowitz and Walker – YES. The new draft will be send to committee members for review and comment prior to releasing the opinion to the public.

Dan Wayne, LAA Legal, asked for additional clarification of what the committee wanted in the new draft opinion. Chair Walker indicated the language in Mr. Benintendi's letter would be used as a foundational basis and a starting point for the redraft. Ms. Anderson will work with Mr. Wayne. If Mr. Wayne needs more specific information or has questions, the committee will be asked for input.

**8. ADVISORY OPINION 07-08 Legislative Travel and Campaigning:** The committee tabled this item at the January 16 meeting. Chair Walker indicated the reason this item is on the agenda is because APOC is considering regulations on the subject of the use of state funds for a work related trip with collateral campaign activity on the same trip. The opinion is a general discussion since no specific factual situation was presented.

A new draft opinion dated April 30, 2008 was in the packet. The terms "political fund raising or campaigning" were made consistent throughout the opinion and a new paragraph was added on page 4 with examples of permitted activity.

The draft opinion states a government asset or resource may not be used by a legislator or legislative employee for involvement in or support of or opposition to partisan political activity. Also, the use or authorization of the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning is prohibited.

Representative Gardner is concerned about the implications in the draft opinion. If she goes on a legislative business trip and at the same time there is an event that she attends that has the overtones of being campaign related or is campaign related, why is this prohibited when the primary purpose of the trip was for a legislative purpose.

Senator Stevens pointed out there is a difference between urban and rural areas in the state when attending legislative meetings and campaigning. Representative Roses gave the following example: A legislator is asked to speak at a Chamber meeting while in a community for a legislative meeting. He sees no problem with this scenario. However if the legislator has 1 ½ hours between legislative meetings and places campaign fliers on doors or holds a campaign fund raiser, this activity should not be permitted. What if the legislator changes his ticket and adds two more days to his trip.

Representative Gardner asked if she attends a fundraiser while in Juneau and or immediately after the session ends, is she in violation because state funds were used to fly her to Juneau. Senator Bunde pointed out there are typically fund raising events prior to the beginning of session as well.

Chair Walker stated this subject is very complicated and there is no easy answer or bright line to draw.

Senator Bunde made a motion to accept the opinion for discussion purposes. Representative Gardner does not support the advisory opinion because it doesn't work for real people. Senator Bunde suggested the committee look at de minimis use similar to the

use of the phone and internet and at the same time consider allocation of time for each activity and associated costs. Representative Gardner reads the opinion as prohibiting legislators from meeting with Party leadership at a Council of State Governments conference in Anchorage for example.

Ms. Anderson stated the executive branch is using an allocation of state funds dependent upon the time spent on state business and time spent on campaign business.

Senator Bunde called the question. Senator Stevens called a point of order. Chair Walker explained the motion was to vote on the advisory opinion as written. Chair Walker explained if the committee decides to not provide guidance to APOC they will draft guidelines without our input. Senator Bunde did not want to have APOC create a regulation in a vacuum. Roll call vote: All committee members voted no.

Senator Bunde moved to send the opinion back for a redraft and include AS 24.60.030(a)(2) which allows for de minimis use of state resources. Roll call vote: All committee members voted yes. Mr. Wayne reminded the committee AS 24.60.030(a)(2) does not apply to the use of state resources for involvement in or support of or opposition to partisan political activity. Ms. Anderson pointed out AS 24.60.030(a)(5) prohibits the use of state resources for the purpose of campaigning and political fund raising.

Representative Roses asked what about a non-incumbent candidate who goes on a paid business trip for his employer and at the same time conducts campaign activities. He wants APOC to consider this type of activity as well. Committee members agreed. APOC may already have regulations or statutory authority for this scenario. Ms. Anderson will follow up and report back to the committee. Representative Gardner wants to exempt travel to the Capital City for the legislative session.

Member Cook commented that the statute is written very tightly in regard to campaign activities. Member Cook and Thomas will work with Mr. Wayne on redrafting the opinion.

Senator Bunde asked if an advisory opinion is being requested by APOC. Ms. Anderson stated the committee determined at the December 12, 2007 meeting that the best way to provide input to APOC would be through the advisory opinion process. Chair Walker suggested the committee write a letter versus a formal binding advisory opinion as opinions are binding on future activity. The letter would express our concerns and offer suggestions.

Senator Bunde moved to rescind the previous motion and send an informal letter to APOC stating the major purpose of travel paid for by the state must be for a legislative purpose, the extended partisan activities must be de minimis in nature, no additional expenses to the state must be incurred, and an allocation of funds based on the percentage of time spent on legislative business and partisan activities be allocated accordingly. He further added the letter should contain a statement that these recommendations may require a change in AS 24.60. Representative Roses asked if we are postponing the inevitable by not issuing an advisory opinion. Senator Bunde feels we need to provide input to APOC now. It appears to be very difficult to write an opinion to reflect actual reality especially in today's climate.

Representative Gardner still feels we need an opinion in addition to the letter to APOC. Representative Roses agrees. Senator Bunde amended his motion to include the committee issue an advisory opinion on this subject as well. Senator Stevens would like a meeting prior to forwarding the letter to APOC since this is such a substantive issue. Chair Walker stated committee members will receive the draft letter for comment and a teleconference meeting will be called to review the letter. Ms. Anderson will check on the time frame for submitting the letter to APOC.

Roll call vote: All committee members voted yes.

The committee took a break from 10:50 a.m. to 11:07 a.m.

**9. COMMITTEE RULES OF PROCEDURE:** Chair Walker asked Ms. Anderson to explain the suggested changes. Ms. Anderson stated records on file in the Ethics Office indicated previous staff to legislators on the Ethics Committee signed a confidentiality agreement acknowledging the confidential nature of information relating to the committee. Chair Walker asked committee members if the Rules of Procedure should be changed to reflect this requirement. The consensus of the committee was a confidentiality agreement was not necessary and therefore no action was taken.

**10. LEGISLATION UPDATE:** Ms. Anderson gave a brief report on the three ethics bills passed this legislative session; HB 368, recommended changes by the Ethics Committee; HB 281, Campaign Finance and Ethics Complaints; and HB 305 Campaign Fund Raising During Session. A newsletter will be sent out explaining the changes as soon as the Governor signs the bills.

**11. ADVISORY OPINION 08-01:** Senator Bunde made a motion at 11:07 a.m. to go into **Executive Session** to discuss Advisory Opinion request 08-01. The requester did not waive confidentiality and pursuant to AS 24.60.160(b) the discussion must be held in Executive Session. Member Rabinowitz left the meeting at 11:50 a.m.

**12. EXECUTIVE SESSION:** Member Turner made a motion at 12:05 p.m. to go back into Public Session. No objection.

**12. PUBLIC SESSION:** Senator Bunde made a motion to approve draft Advisory Opinion 08-01 as amended. Senator Stevens objected. Senator Bunde withdrew his motion. Committee discussion. Add a sentence to the "Conclusion" section: There are no other options you are required to take. Senator Bunde made a motion to adopt the opinion as amended. Roll call vote: Senator Stevens – NO; Senator Bunde, Representative Roses, Representative Gardner, Members Thomas, Cook, Turner, Walker – YES. Member Rabinowitz present for discussion but absent for vote. Advisory Opinion 08-01 approved.

**13. OTHER BUSINESS:** None.

**14. ADJOURN:** Member Thomas made a motion to adjourn at 12:15 p.m. Hearing no objection, motion carried.