

ALASKA STATE LEGISLATURE
SELECT COMMITTEE ON LEGISLATIVE ETHICS
JANUARY 12, 2018
8:26 AM

[8:33:59 AM](#)

Members Present:

Senator John Coghill (Teleconference)
Senator Dennis Egan
Representative Chris Tuck
Skip Cook
Conner Thomas
Deb Fancher
Lee Holmes

Others Present:

Dan Wayne, LAA Legal
Jerry Anderson, Administrator
Janice Stewart, Administrative Assistant

1. Call the Meeting to Order:

The meeting was called to order by Chair Conner Thomas at 8:35 am.

2. Approval of Agenda:

A motion to approve the agenda was made by member Lee Holmes. No objection. Agenda was approved.

3. Approval of Minutes:

a. November 23, 2017 Full Committee Minutes

Motion to approve by Deb Fancher. No objection.
Minutes approved.

4. Public Comment: No public comment

5. Chair/Staff Report

a. Administrator Comments: None

b. Informal Advice Staff Report:

Chair Conner Thomas had a question regarding the staff report, page 4, *May a legislator provide part of his office space to a member of the public ...* Did they tell you what the purpose was?

Jerry Anderson replied he would hesitate to tell the committee too much since informal advice is confidential and providing more detail would divulge the identity of the caller. In brief, a legislative blog was going to be produced and a legislator wanted to provide office space for the person writing it.

Chair Thomas commented that the answer was unclear.

Anderson clarified the question by stating there was no legislative purpose and doing so might provide a private benefit to the writer.

Thomas replied that what drew his attention was the exception listed that said it would be okay if it was just nominal use. He couldn't tell if Anderson was telling the person it was nominal use and therefore was okay.

Jerry Anderson said the situation would have gone beyond nominal use as the person would have been there on a regular basis. Some legislators allowed limited use, but this was beyond that. Anderson asked the legislative members on the committee to comment on how they provide the use of their offices in a limited way.

Thomas noted that nominal use as an exception is fine, but it must apply across the board. A legislator shouldn't pick and choose who is allowed to use it. There should be no discrimination. The answer made it sound like it was up to the legislator to decide who can and who cannot use the space.

Anderson replied that he looked at it as a matter of judgment by the legislator to determine what activity goes on in their office. Typically, this would be in a public area of the office. He didn't look at it as being a selective process.

Representative Tuck commented that he has visiting constituents who are allowed to store backpacks and print airline boarding passes. It's a nominal use, an occasional courtesy that legislators allow.

Chair Thomas replied that he had no problem with that, as long it was available to all.

Senator Egan mentioned that on rare occasions they did allow folks de minimus use of the office. For example, during special session a borough employee needed a place to sit and use a laptop and his senator wasn't there, so Egan's office provided him the courtesy of using their office.

There were no further comments on this topic.

**c. COGEL (Conference on Legislative Ethics Laws)
Conference Report**

i. Skip Cook Comments:

COGEL was held in Toronto, Ontario. It's a growing organization, and this was the largest conference so far. It will be held in Philadelphia, PA, next year. It covers a wide range of topics. One interesting session was on training, with the presenter encouraging interactive models to accommodate shorter attention spans. It would be good to reassess the ethics training on a regular basis. A session on Investigation training and procedures was useful as was information on finding the line between constituent services and campaigning. It's a worthwhile event for information and training and a good reminder of the wide variety of things we need to consider in our committee.

ii. Lee Holmes Comments:

This was a very interesting conference. Found the things we discuss and struggle with in Alaska is nationwide: social media, ethics and documentation. Have recommendations and people we might contact that have developed social media policies that might be helpful to us. One instance is intent vs. letter of the law, as you can't write laws that cover every possible circumstance, so it comes back to intent. Found

there are a lot of resources to help us understand the issues we are dealing with. Encourage people to attend.

d. Ethics Disclosures:

Jerry Anderson noted the current trends. First, *Membership on a Board of Directors* disclosures continue to increase as we educate legislative employees on the requirements. Another trend is the continued decrease in *Close Economic Association* (CEA) disclosures because of the \$250 or more determination. A CEA disclosure does not have a dollar amount that needs to be disclosed, but once it was understood that the association must be \$250 or more to require a filing, it caused a decrease in submissions. A decrease in *Travel/Hospitality* disclosures was also noted and was possibly caused by the current fiscal situation in Alaska.

Member Skip Cook asked when annual disclosures are due. Jerry Anderson replied within 30 days after first day of session.

e. Publications:

Jerry Anderson noted that committee members had received the ethics office publications for 2017. The first was a public decision document that included one item. The second included all advisory opinions issued by the committee in 2017. Both publications will be distributed to legislators at the beginning of session.

In addition, the Standards of Conduct Handbook was updated and distributed to each legislator. An online edition is also available on the ethics committee website.

f. Budget Report:

Jerry Anderson commented that the committee was looking at a flat budget for both FY18 and FY19. There was very little travel last year and the ethics office gave back a large amount of money.

Conner Thomas noted that the committee was well within its budget requirements.

6. Annual Benefit and Loan Review:

Jerry Anderson directed the committee's attention to Appendix C in the Standards of Conduct Handbook. Legislators and legislative employees participating in any of the listed programs must file a disclosure with the committee.

The committee reviews the programs and sends a request for updates to all state departments on an annual basis. Kelly Howell, a director with the Department of Public Safety sent a request for a program to be added to the list. Administrator Jerry Anderson recommended that the program not be added as it does not meet the program requirements. It is a program not generally available to the public being specific to law enforcement officers and firefighters killed in the line of duty, with little to no discretion involved. It is not subject to influence like other programs that have been approved by the committee.

Chair Conner Thomas asked if a motion was needed to remove or add a program. Anderson replied that it was not required, and that he would contact the department and explain why it was not added to the program list.

7. Request Additional Ethics Training under AS 24.60.155:

Jerry Anderson explained that this item was included since the committee has been asked to include the sexual harassment training as part of the ethics training. A memo was received from the legislative legal department stating that Ethics could provide sexual harassment training as part of AS 24.60. Whether or not it is included is a decision for the committee to make.

Anderson pointed out that the committee Rules of Procedure Section 12 discusses training and AS 24.60.150 specifies the kind of training the committee provides. Under AS 24.60.150 one of the duties of the committee is to provide training within 10 days of the first day of each regular session of the legislature and at other times as determined by the committee. This particular request would be at other times determined by the committee. The Ethics Act AS 24.60.039 includes a statute section that is entitled 'Discrimination is Prohibited' based on AS 18.80.220. The Ethics Acts includes a discrimination prohibited section

that would include sexual harassment as one of the things prohibited by reference to AS 18.80.220.

Legislative leadership, the personnel office, and legislative legal had input into the new training and their request is to bring it under the umbrella of the Legislative Ethics Act since AS 24.60.155 makes it mandatory.

Member Skip Cook stated that this issue needs careful consideration. The committee is required to administer certain types of training. The Human Rights Commission is already providing training for legislative staff. Legislative leadership wants it to be required for legislators also through the ethics committee. Our training is already 3 hours long and this would extend it.

Jerry Anderson mentioned that legislative ethics training had been held the previous day. The training was three hours long. An inclusion of the sexual harassment training would increase the ethics training to six hours.

Skip Cook commented that harassment complaints go to the State Commission on Human Rights, and a complaint can also be filed with the ethics committee. The committee can hold on and see what the Human Rights Commission does. Sexual harassment training should be continued to be provided through the Human Rights Commission. If the legislature wants to make it mandatory for all legislators and legislative employees, it should be written in the statute. They are trying to be politically correct, rush it through, and throw it under the committee's umbrella to administer but the committee is not "administering" it. It's all administered and provided by the State Commission on Human Rights.

Representative Tuck stated that the intent in placing training under the ethics committee is to make it mandatory so action could be taken against legislators who refuse to take it. Since the committee has public members, action can be taken against legislators who don't comply. Leadership wanted the authority to be mandatory under the ethics committee so complaints could be filed.

Conner Thomas asked what discretion the committee has on whether or not to include the sexual harassment training. Is there any requirement that it has to be included?

Jerry Anderson referred the committee to the packet material where it says the committee has discretion to decide about other training. For the committee to adopt the training they would have use the ..."other times..." language. Also, in Rules of Procedure Section 12 it states the committee shall...and at other times as determined by the committee...provide training. It is within the discretion of the committee to decide what to provide.

Conner Thomas asked if it was under the discretion of the committee NOT to include additional training?

Jerry Anderson believed that answer would be yes, and asked Dan Wayne from Legislative Legal to respond to Thomas's question.

Dan Wayne stated that as a matter of risk management, they would like the sexual harassment training to be included as part of the ethics course. Two trainings are required to teach compliance and that could be included. It could be supplemental training by the Human Rights Commission. He agreed the committee is not required because it is under AS 18.80.220, which is not part of the Ethics Act, making the committee not responsible, but because it is cross referenced to the committee, they could require that it be added in. Wayne also noted that Section 12 of the Rules of Procedure says the committee could provide training in a variety of ways and may include training by ethics staff. That leaves it open as far as how the training would be administered. Compliance with AS 24.60.039 requires training on AS 18.80.220.

Skip Cook commented that if the ethics committee is going to be charged with administering the training, how can training times be minimized? Staff are already chafing at three hours, and this increases it to six. The committee doesn't have time to revamp training for this year. Saying we want to borrow the committee to make it mandatory isn't good. Senator Egan said there is legislation in place now to make it mandatory. The committee needs to wait and do it right.

Senator Coghill agreed that the Human Rights Commission training is best for employees. The way the elected legislators deal with it is different than the employee circumstance. He didn't know if it needed to be done right

now, but consideration needed to be made in how a legislator acts in conjunction with employees. He wasn't sure that the Human Rights Commission is addressing that issue. There is a difference between a legislator and employees who serve at the will of their employers. It's something that needs to be considered in the future.

Conner Thomas asked Jerry Anderson who would administer the training, whether the training would continue to be provided by the Human Rights Commission or would their training be revamped into the ethics training.

Jerry Anderson responded that the question regarding "administer" had been discussed. What does that mean? If all the ethics committee does is put out a sign-up sheet, it does not fit the definition. The question rose what would that look like? Anderson didn't know what it would entail at this point. He had asked legislative legal but had no response yet. The ethics committee wouldn't control what's in the training. Staff does not have the expertise that the Human Rights Commission has, and staff does not have the knowledge to provide oversight.

Conner Thomas asked if we decided today to take it over, when would it become effective?

Jerry Anderson replied that it would take effect immediately under the authority of AS 24.60.155.

Skip Cook commented that training by the Human Rights Commission doesn't address the legislators' particular situation, so why should it be mandatory for them to attend something ineffective. Maybe something can be developed just for legislators, but we need to take the time to do it right.

Representative Tuck mentioned that new legislators didn't get the training last year during their orientation. All legislators are currently scheduled for January 17, 2018, but some are not coming. It is going to be provided by the Human Rights Commission, but we already have members saying they are not going to attend. He noted that request from personnel was to have the ethics committee require the training through the Human Rights Commission. It was not necessarily a request for the ethics committee to produce and administer sexual harassment training.

Deb Fancher commented that it seemed to be a reasonable request, but if the ethics committee is administering it, we are responsible, and don't want to recreate something that is in place.

Senator Egan noted that the Senate is also meeting on the 17th but that training will differ from the training provided to legislative employees.

Representative Tuck stated that there is no other authority to require the training. The Ethics committee is the only organization that can require and take "corrective action" if legislators don't attend.

Dan Wayne volunteered a dictionary definition of "Administer" since it is not defined in the Ethics Act:

Administer: to manage or supervise the execution, use, or conduct of, provide or apply, to give officially as part of a ritual, to teach.

Wayne commented that if the committee made it available, had a sign-up sheet, etc. they are not doing anything different from the current ethics training except that someone different is actually teaching it. The course we are required take every two years now, compliance is proved through a sign-up sheet. To administer doesn't mean the committee has to build the program from the ground up. If you have an opportunity to provide training from an expert, that's what you do. Take advantage of what's already been provided. For risk-management reasons workplace harassment and discrimination training should become part of the ethics training package. That includes training in all areas of discrimination: race, religion, age, etc.

Conner Thomas asked if the Human Rights Commission addressed discrimination issues mentioned by Dan Wayne.

Wayne replied that the training covered a broad range of areas. It was not tailored to legislature, but their training was applicable to anyone in the workplace.

Representative Tuck noted that Ethics in general is there to protect the integrity of the institution. How do we treat each other? He stated it is appropriate for the committee to take this on and consider it. It provides

accountability for legislators. There is very little the personnel office can do to address non-compliance.

Conner Thomas asked why not wait and see what happens with legislation.

Representative Tuck responded that the committee has authority now and can force all legislators to take it or face corrective action.

Jerry Anderson commented that he had taken the training, and it was broad in scope and good for legislative employees.

Skip Cook noted that he was not against the sexual harassment training - it's necessary. He was against the rush to take this on without knowing what is in it. How is it tailored? It's best built into the committee's own training and make all training into one session. The committee needs time to get it ready for next year. Cook said the committee was putting its stamp of approval on training they'd never seen. It needed to be a part of the committee's regular training cycle, which would start next year.

Lee Holmes asked, as a new member, has this committee looked at the training and approved it? Or do members delegate it to the administrator to do what needs to be done. The committee says to the administrator, "We want this to be part of the training plan, and you build the training and provide it." We as the committee don't get in the way, we don't go over the content, we let the administrator do that. Would it be as simple as Jerry working with the other groups and making sure it is given and keeping track of who has attended? We are here to make sure the institution of state government is moving forward. This is a stop-gap solution until legislation is passed. Training will not necessarily be mandated through us at that time, but it would help solve a short-term problem.

Skip Cook commented on the history of ethics training, noting that the administrator is responsible for building the training, but committee members do attend and give feedback, so committee members are involved in content.

Jerry Anderson noted that a timeframe for the Human Rights Commission is in place for this year and could be rolled in

for next year. The committee has no input for scheduling sessions this year. If the committee decides to take the training on, staff would make sure that everyone has taken it as required either face-to-face or online.

Representative Tuck stated that this isn't adding to the ethics training. This is an additional training, anti-harassment, just for this year. It's not a part of the ethics training. It's handled separately. Section 12 says others can administer the training.

Dan Wayne commented the legislative legal memo recommended making it part of mandatory ethics training. If it is made part of the mandatory training, the committee can require it for this year. The committee can require training at various times.

Conner Thomas commented that the committee can "require" the Human Rights Commission training for this year.

Skip Cook asked if the training could be required under Uniform Rules. He thought the committee was making more work for itself. Cook commented that the legislature has its own avenue to do so.

Deb Fancher commented that when a body asks for more training give it to them, something with some teeth. And with current climate it needs to be required.

Representative Tuck noted that there already was a press release of someone not going. The training needed to be required and commented that the Committee needed to be flexible enough to take on this just for one year. The legislative body could strip members off committees, pull staff, and sanction them on the floor, but recommendations from public members were powerful.

Conner Thomas asked Dan Wayne if the mandate could be limited to one year. Wayne state he believed so. Thomas asked for a motion to approve the request. Members would be voting on making training by the Human Right Commission mandatory for legislators and staff.

A motion to approve was made by member Deb Fancher with the understanding it was to be one year only.

Jerry Anderson added a clarification that the training would be required for all legislative employees and legislators, including public members of the ethics committee.

Deb Fancher added: using Human Rights Commission training.

Administrator Jerry Anderson called the Roll:

Senator Egan	Y
Rep. Tuck	Y
Skip Cook	N
Conner Thomas	N
Deb Fancher	Y
Lee Holmes	Y
Senator Coghill	Y

The motion carried. Jerry Anderson noted there was a teleconference option available. Staff would provide the schedule and send out an action alert.

Senator Coghill brought a question regarding the Standard of Conduct Handbook. Employees were required to sign that they had received the handbook, yet hardcopy distribution was limited to legislative offices. He thought it was an issued that needed to be addressed. Jerry Anderson noted that the handbook is available online and employees have access to it in that form. Individual copies would no longer be printed. Senator Coghill noted that requirement was for individual copies. It was an issue that needed to be addressed.

Representative Reinbold, alternate member for Representative Eastman, joined the committee at approximately 10:00 a.m.

8. Motion to go into EXECUTIVE SESSION to discuss matters which by law must remain confidential under AS 24.60.160, Uniform Rule 22(b) regarding executive sessions, and Rules of Procedure Section 5: Executive Sessions and discussion of matters, the immediate knowledge of would adversely affect the finances of a governmental unit, and discussion of subjects that tend to prejudice the reputation and character of a person.

A Motion to enter executive Session was made by Lee Holmes.

9. Executive Session:

10. Public Session:

Conner Thomas noted that the committee would take a roll-call vote to ratify Advisory Opinion AO 17-05 as published after committee discussion.

Administrator Jerry Anderson called the Roll:

Skip Cook	Y
Conner Thomas	Y
Lee Holmes	Y
Senator Coghill	Y
Senator Egan	Y
Rep. Reinbold	Y
Rep. Tuck	Y
Deb Fancher	Y

The vote ratifying AO 17-05 as published passed 7 - 0.

11. Other Business:

Discussion regarding a date for the next meeting was delayed.

12. Adjourn

A motion to adjourn the meeting was made by Rep. Tuck. No objection.

Meeting was adjourned at 11:02 a.m.

[11:03:16 AM](#)